HINDU LAW OF ENDOWMENTS.



# Tagore Baw Bectures, 1892.

# THE HINDU LAW OF ENDOWMENTS.

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## PREFACE.

THE delay in publishing this volume calls for a word of explanation. It is due to a series of misfortunes that have befallen me; and I have every hope that when I have related to the public what these misfortunes are, the public, in its generosity, will overlook the delay.

Before the author of this volume, my late lamented father, could see it through the press, he was cut off by an untimely death in October 1892. As soon as we could somewhat recover from this severe shock, my uncle, the late Babu Biswambhur Nath Pundit, exerted all his energies to place in the hands of the public, as early as he could, this work of his lamented brother, which occupied the closing days of his life. But with the best portion of his time occupied in his own law-studies and pressed down with the cares of his bereaved family it must be confessed that the work did not progress as quickly as he wished it to do. But to crown the misfortunes of his sorrowing family, my uncle, too, met with an untimely death in December last. Crushed by these misfortunes, myself scarcely out of teens, with my

studies and the affairs of my family to engage my time and attention, I had little hope of placing this volume before the public, but for the kindly help of Babus Girija Sankar Majumdar, Vakil, High Court, and Provash Chandra Mitter, M.A., B.L., to whom I hereby return my best thanks. In conclusion, I again beg the public to consider the unfortunate circumstances related above and to overlook the delay in publishing this volume.

SHAMBHU NATH PANDIT STREET, BHAWANTUR:

Dated the 10th of September, 1897.

SHYAM SUNDAR PANDIT.

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# THE HINDU LAW OF ENDOWMENTS.

#### CHAPTER I.

(Lectures I and VIII.)

On the Aims and Objects of Hindu Endowments, 'Ishta' and 'Purtta.'

Derivation and meaning of 'endowment,' 1; legal meaning of 'charity,' 2; charitable objects enumerated in the Statute of Elizabeth, 3; the meaning extended to all objects of public trust, 4.—HINDU ENDOW-MENTS: no artificial definitions, -the modern and popular sense of the word,-absence of native or foreign treatises,-the substantive law unaffected by British legislation, -effect of the British Laws of revenue, evidence and procedure, 5.-Necessity of further Legislation,-Regulation XIX of 1810 repealed by Act XX of 1863; Sec. 539 of the Civil Procedure Code and Act VI of 1890 not adequate, 6.—HINDU MOTIVES FOR ENDOWMENTS, Sir Thomas Strange's view questioned, 7; false analogy with death-bed alienations forbidden by the Statutes of Mortmain, 8; Mayne's prejudice against Brahmins and its cause, 9; the Mortmain Act not applicable to India, but its object secured by the Indian Succession Act, 10.—The origin of the HINDU SYSTEM OF ENDOWMENT, Vedas the revelations of the Hindus and source of all law; canonical precedence of Sruti over Smriti, 11; ancient doctrine of suppositous texts of Sruti, inference of 'law' from 'usage,' 12; historical grounds for the examination of the Vedas, 13; germinal ideas of the merits of charity in the Rig Veda, meaning of 'gift' expounded by Max Müller and Wilson, 14; the positive merit and negative benefit of gifts, 15; gifts not for the aggrandisement of the Brahmins, 16.—The division of all pious works into Ishta and Purtta, 17.—Enumeration of Ishta works 18; the Vedic notion of hospitality, 19; Apastamba and Baudhayana on hospitality, 20; the duties of panchayagna, 21; the guest as a divinity, 22; institution of guest-houses, 23. - Enumeration of PURTTA works; hospitals, 24.—Gifts for the advancement of learn-

1. The subject allotted for the present course of lectures Etymology of is the Law of Hindu Endowments. The English verb, 'endowment.

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to endow, is derived from Norman-French endouer, from French douer, which again traces its derivation to the Latin verb dotare, to endow, from dos, marriage portion, dowry.1 As might be expected from its etymology the word endowment originally signified the bestowing or assuring of dower on a woman.2 As the Church is metaphorically spoken of as the bride of Christ, by an extension of the metaphor the word endowment came to denote the settling a provision upon a parson, or building of a church or chapel; and the severing a sufficient portion of tithes, etc., for a vicar, towards his perpetual maintenance, when the benefice is appropriated. Examples of the use of the word in this sense will be found in the Statutes 15 Richard II, Ch. 6, and 4 Henry IV, Ch. 12.

extended Its meaning.

plained.

By analogy the word gradually acquired an extended meaning, including, as in the Charitable Trusts Act, 1853, all property, real or personal, "which shall for the time being belong to or be held in trust for any charity, or 'Charity' ex- for all or any of the objects or purposes thereof."3 word charity again has a technical meaning in English legal literature. To use the words of Grant, M. R., in Morice v. Bishop of Durham,4 "that word in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this Court. Here its signification is chiefly derived from the Statute of Elizabeth. Those purposes are charitable which the Statute enumerates, or which by analogies are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied." This indeed is the meaning legally attached to charity by the Charitable Trusts Act of 1853 and its amending Act of 1855.5

Webster, and Maine's Early History of Institutions, pp. 337-8.

<sup>\*</sup> Tomlins' Law Dictionary, 4th edition.

<sup>\* 16</sup> and 17 Vict., c. 137, sec. 66.

Tudor's Charitable Trusts, 3rd edition, p. 532.

<sup>• 9</sup> Ves. at p. 405. Ditto, p. 1. • 16 and 17 Vict., c. 137, sec. 66. 18 and 19 Vict., c. 124, sec. 48.

- The charitable objects are enumerated as follows in What are the preamble to the Statute of Elizabeth1:—"The relief of objects'; aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; the education and preferment of orphans; relief stock, or maintenance for houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes."
- With the progress of society many other objects Charitable not so enumerated have been judicially declared to be trust same as public trust. charitable "within the meaning, purview, or interpretation" of the Statute of Elizabeth. Thus gifts for the advancement of learning or of religion or for any public and general purpose have been held to be charitable within the spirit and intendment of the Statute.2 Indeed, the final result of the English decisions has been to make the expressions public trust and charitable trust synonymous.8
- In dealing with HINDU ENDOWMENTS we are not Hindu fettered by any artificial definitions. For our purposes undefined. the word will be taken in its modern popular sense, namely, any property dedicated for religious or charitable purposes. The subject, indeed, is one of some difficulty in the absence of any appreciable aid to be derived from systematic No Special treatises of native or foreign composition. The history of the Hindu religion has formed the subject of erudite and careful research at the hands of European scholars whose names are familiar as household words in India; the religious books of the Hindus have—many of them—been published and some of them translated, and accurate accounts have been published from time to time of the

<sup>&</sup>lt;sup>2</sup> 45 Eliz., c. 4. Tudor's Charitable Trusts, p. 1.

Ditto, pp. 1, 5, 6, 11.

Ditto, p. 2.

numerous sects into which the followers of the Hindu

which the law is

rent enactments.

religion are now divided. The Law of Endowments does not form the subject of any separate treatise or chapter, Sources from but has to be diligently searched out in the midst of the to be gleaned. whole field of Sanskrit Literature, vast even in its survival, and has to be supplemented by the judicial decisions Effect of cur- of British Courts for the last century and a quarter. century of British legislation has made very little change in the subject-matter under consideration. Laws of revenue have imposed fees on the documents creating endowments; laws of evidence have dictated their being recorded in the public offices, and laws of procedure have prescribed the particular mode in which remedies should be pursued; but the substantive law may on the whole be said to have remained unaffected by legislative enactment.

Sovereign's duty to prevent misappropria-

The important duty of every Government to provide that endowments for pious and beneficial purposes be applied according to the real intent and will of the grantor was early recognised by the British administration, and Regulation XIX of 1810 was the beneficent outcome of this conviction. This regulation was instrumental in saving many of the native endowments from ruin and misappropriation until religious scruples led to its repeal by Act XX of 1863. The organisation intended to be provided by the latter Act to continue the good work of the Superintendents and local Agents of former times, was inherently weak and has died a natural death, with the disastrous result that it is practically impossible to Fresh legisla compel the managers of endowments to perform their allotted duties with honesty and faithfulness. brous and costly procedure of a suit under section 539 or under the general provisions of the Civil Procedure Code is an inadequate remedy for the serious disease which has attacked many of our endowments, and the recentlypassed Charitable Endowments Act No. VI of 1890 does not affect exclusively religious institutions and is for the most part of a permissive character.

tion necessary.

The frequency and magnitude of the gifts made by Hindu motives for endow-Hindus for pious purposes naturally attracted the early ment. attention of those Englishmen who had to administer their affairs. Thus Sir Thomas Strange, writing to Colebrook in 1812,1 observed that in all the wills made by Hindus of Madras "a great proportion of the property is bequeathed to superstitious uses." The religious habit is truly recorded, but when the learned writer proceeds to state that "the proportion is commonly in the ratio of the iniquity with. which it has been acquired or of the sensuality or corrup- An unmerited tion to which it has been devoted-sic hi non ipsis mellificant—I would rather see it distributed in their families," he seems to be treading on less firm ground if he means to suggest that the said Hindu endowments are peculiarly the products of repentance by sinners of various degrees. In all systems of religion recognising the existence of an after-life, the distinctions of vice and virtue, and the possibility of atoning for the past errors of life by repentance and good deeds, it is but natural to expect that on the approach of death a man should search his life and seek Desire for exto make peace with his Maker by assigning his departing but Hinduism wealth for such purposes as might, according to his lights, no encourager vice. expiate his faults and increase his merits. As to the suggestion that the proceeds of iniquity contribute towards the creation of religious endowments there is a text of Manu,<sup>2</sup> which promises bliss for the performance of religious and charitable acts "with riches honestly gained." The Hindu religion therefore does not hold out any inducement to its votaries to earn riches by vice and then to spend a portion of the same in expiating for the

ally and sedulously perform sacred rites (इसं) and (perform प्रम, i.e.) consecrate pools or gardens with faith; since these two acts ( इष्टापनं ) accomplished with faith and with riches honestly gained, procure an unperishable reward."

<sup>&</sup>lt;sup>2</sup> Hindu Law, London, 1830, Vol. II, p. 453.

<sup>&</sup>lt;sup>2</sup> Institutes of Manu, IV, 226. श्रद्धयेष्ठञ्च पत्तेञ्च नित्यं कुर्य्योदतन्द्रितः। श्रदाक्रवे उचये वे भवतः खामते धनैः॥

<sup>&</sup>quot;Let each wealthy man continu-

iniquities which led to the acquisition. There is a common Bengali proverb of bestowing a shoe after slaughtering a cow, which well expresses this view of the transaction. The Shasters do not grant absolution for the killing of the cow by the gift of a shoe made from its hide.

Probable cause of Sir T. Strange's wrong notion.

It might well be surmised that Sir Thomas Strange's mind was unconsciously influenced by the existence, up to recent times, in his own country, of an analogous state of things which necessitated the passing of special laws to nullify charitable bequests by dying persons. Although the old Statutes of Mortmain were principally dictated with the political object of preserving the feudal services due to the Crown and the feudal aristocracy, the avowed policy of the Georgian Mortmain Act of 1736 was to strike at the growing practice of death-bed alienations by moribund sinners. The preamble to the Statute recites that "gifts or alienations of lands, tenements, or hereditaments in Mortmain are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing and dying persons or by other persons to uses, called charitable uses, to take place after their deaths to the disherison of their lawful heirs." 1 According to a distinguished cotemporary Judge, the reason of the Statute was "to hinder gifts by dying persons out of a pretended or mistaken notion of religion, as thinking it might be for the benefit of their souls to give their lands to charities, which they paid no regard to in their lifetime."3

Influence of priests exaggerated by Mayne. 9. It is observed by Mayne that "gifts for religious and charitable purposes were naturally favored by the Brâhmanas, as they are everywhere by the priestly class," and in connection therewith he quotes the text of Sankha

<sup>&</sup>lt;sup>1</sup> 9 Geo. II, c. 36. Boyle, p. 71.

<sup>&</sup>lt;sup>2</sup> Lord Hardwicke, in Attorney-General v. Lord Weymouth, Amb.

<sup>23.</sup> Boyle, p. 71.

<sup>\*</sup> Hindu Law and Usage, page 459, para. 393.

that "wealth was conferred for the sake of defraying sacrifices." 1 Vishwa Nath Narayan Mandlik objects to this genesis of Hindu endowments and traces the same to the common feelings of human nature, namely, charity and the desire to acquire religious merit. It seems Charity and to me that Mayne has been led away to some extent by incentives. the ordinary vituperations against the Brahmins as the authors of all evil, which the preachers of the Gospel Probable were the first to forge, and by the association of ideas Mayne's prewith what actually occurred in England in olden times judice against Brahmins. and led to the passing of the Mortmain Acts. case of Attorney-General v. Day, Lord Hardwicke de. clared that in passing the Georgian Mortmain Act the Legislature had it particularly in view "to prevent persons in their last moments from being imposed on to give their real estates from their families," which view to his Lordship's mind was a very wise one; "for by that means, in times of popery, the clergy got almost half the real property of the kingdom into their hands; and indeed he wondered they did not get the rest, as people thought they thereby purchased Heaven. But it was so far from being charity or piety, that it was rather a monument of impiety and of the vanity of the founders."

10. I may here observe in passing, that the Georgian Statutory pro-Mortmain Act provided among other things that no death-bed entransfer of real property or of personal estate for in-downents. vestment in real estate "in trust or for the benefit of any charitable uses whatsoever" should be valid unless made with certain formalities, -- "twelve calendar months at least before the death" of the transferor; and similarly no transfer of stocks in the public funds for the same purposes was to be valid "unless such stocks be transferred in the public books, usually kept for the transfer of stocks, six calendar months at least before" the

Colebrooke's <sup>3</sup> Quoted from Digest, Vol. 3, p. 484.

<sup>1</sup> Ves. Sen. 223. Boyle, pp.70-71.

<sup>\* 9</sup> Geo. II, c. 36, sec. 1. Boyle, pp. 71-72,

transferor's death. These provisions have been repeated in the existing English Law on the subject, the Mortmain and Charitable Uses Act, 1888.1

The Statutes of Mortmain not applicable to India;

In the celebrated case of the Mayor of Lyons v. The East India Company, the question was raised whether the Statutes of Mortmain extended to India, and decided in the negative, principally relying on the ratio decidendi of Sir William Grant in Attorney-General v. Stuart.3 where it was held "that the Statute of Mortmain does not extend to the colonies governed by the English Law, unless it has been expressly introduced there; because it had its origin in a policy peculiarly adapted to circumstances of the mother country." In the concluding portion of their judgment, the Judicial Committee remark that the question on the Mortmain Act cannot be said any longer to exist in the cause. It is agreed, on all hands, that the Statute does not apply to India." This part of the object of the Statute, but Act X of however, is secured by section 105 of the Indian Succeslar provisions. sion Act, X of 1865, to those subjects of Her Majesty in India who are not Hindus, Mahomedans or Buddhists: "No man having a nephew or niece, or any nearer relative, shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons."

Origin of to Vedas. which should be examined:

The present system of Hindu endowments is the Hindu endow- evolutionary product of the religious history of the people from the most ancient times. Its roots can be traced back even to the Vedas. A writer on any branch of the Hindu Law is bound to investigate the Vedas for any indications

<sup>&</sup>lt;sup>1</sup> 51 & 52 Vict., c. 42, sec. 4, cl. 6-9. Tyssen's Charitable Bequests, p. 555.

<sup>&</sup>lt;sup>2</sup> Moore's I. A., Vol. I, p. 175.

<sup>\*2</sup> Mer. 161 (also quoted in argument in Morton, p. 109), Moore's I. A., Vol. I, p. 271.

however embryonic of the subject-matter under consideration. By the theory of the Hindu religion, the Vedas are a direct Revelation by the Supreme Deity, if not a for, they are pre-existent entity. The former doctrine is countenanced Revelations, by the Purusha-sukta of the Rig Veda, reciting the origin of "the hymns called Rich and Sáman, the metres and the Yajush" from the universal sacrifice offered by the gods. The latter doctrine is alluded to in the account of the Creation in Manu, where the Supreme Spirit is said to have "first assigned to all creatures distinct names, distinct acts, and distinct occupations, as they had been revealed in the pre-existing Vedas," and it is expressly laid down by Parásara (I, 20), who declares that there is no creator of the Vedas,—Brahmá is only the rememberer of the Vedas:

# "न कस्विद् वेदकर्ता च वेदसार्ता चतुर्मुखः।"

It is therefore but natural that they should be looked source of all upon as the source of all law. "The Veda," says Gautama, "is the source of the sacred law." "The sacred law," says Baudháyana, "is taught in each Veda." Similarly, Vasistha premises that the sacred law has been settled by the revealed texts." Manu declares "the whole Veda" to be the first "root of law," and later on the same sage enumerates the Veda as the first of the four

<sup>1</sup> तस्राद् यज्ञात सम्बेडतः श्रदाः

सामान जिति र ।
इन्दांसि जिति र तसाः यू यजुससाः
दजायत ॥
Rig Veda, X, 90-9. Muir, Vol.
V, p 371.
2 सर्वेषानु नामानि कसीनि च
इच्च प्रयक् ॥
वेदसब्देश्य स्वादी प्रयक्षस्त्रांस निक्रिमे॥
Manu, I, 21.

Institutes of Gautame, I, 1. Müller, S. B.E., Vol. II, p. 173.

<sup>&</sup>lt;sup>4</sup> Institutes of Baudhayana, I, 1, 1, 1. Müller, S. B. E. Vol. XIV, p. 143.

Institutes of Vasistha, I, 4. Müller, S. B. E., Vol. XIV, p. 1.

<sup>&</sup>lt;sup>6</sup> वेदोऽचिच्चोधसंस्कं कृतिमौत्ते च तदिदास्। चाचारचेव साधूनामात्मनसृष्टिरेव च<sup>।</sup> Manu II, 6.

manifest authorities on law.\(^1\) The same enumeration occurs in the Institutes of Yajnavalkya almost in the same words:—

and the best canonical authority.

"The Sruti (Veda), the Smriti, the practice of good men, what seems good to one's self, and a desire maturely considered; these are declared to be the root of law."<sup>2</sup>

The same priority in enumeration is accorded to the Veda over the Smriti in the Dharma Sutras of Gautama, Baudháyana and Vashistha; and in the Mahábhárata, it is said: For those who desire to know the law, the Sruti is the best authority; the Dharma Sástra is the second, and the third the practice of (good) men.<sup>8</sup> Vignáneshwara, in commenting on the above sloka of Yájnavalkya, remarks that in case of conflict, the above authorities have precedence in the order of their enumeration.<sup>4</sup> The canon here laid down is so well known amongst Hindu jurists that the learned commentator did not consider it necessary to cite any text in support thereof; but if any authority were required it would be sufficient to refer to the Aphorisms of Jaimini, where it is laid down that a Smriti opposed to

### <sup>1</sup> वेदः कृतिः सदाचारः सस्य च त्रियमातावः।

# रतवतुविधं प्राक्तः साचादकीसा सच-

Manu II, 12.

Sir William Jones's rendering of the words साचान and स्वयस् is erroneous. Compare his translation—"(These) the wise have openly declared to be the quadruple description of the juridical system," with Bühler's "(These) they declare to be visibly the four-fold means of defining the acred law."

<sup>3</sup> मृतिः खृतिः सदाचारः खद्य च प्रियमातामः।

## चम्बन-चङ्काष्यजः कामो धर्मायुक्तमिर् स्वतम् ॥

Mitákshará, A'chára, 7. Röer and Montriou, p. 3.

३ थया जिल्लासमानामा प्रमाचं परमंत्रुतिः। दितीयं भक्तेगासम् हतीयं स्रोकः

Mahábháratam, Anushásan-

4 "श्वेषाव्यिरोधे पूर्व पूर्व वस्त्रीय-स्त्रसः"

Mitákshará, A'chára, leaf 2-1, line 11.

Sruti is no authority. Vyása in his Institutes declares that where there is a conflict of authority between the Sruti, Smriti and the Puranas, there the Sruti is the authority to be followed, and the same doctrine is enjoined in a Smriti text quoted in the *Prayoga Párijáta*:

# "स्मृते वेद-विरोधे तु परित्यागो यथा भवेत्। तथैव जौकिकं वाक्यं स्मृतिवाधे परित्यजेत्॥"

(Vidyáságar's Vidhabá Viváha, p. 213.)

12. Indeed, the very conception of the Smriti as a Doctrine of memory or tradition among the sages implies the supre-suppositous macy of the Veda, for the tradition is authoritative not by itself but as a tradition of the Veda. The Manu Samhita claims pre-eminence for itself on account of the universality of Manu's knowledge, which according to Kulluka enabled Manu to embody the purport of many Vedic texts which are now lost or disarranged, and the same ground is urged by Vrihaspati in a text quoted by Kulluka in his commentary to the opening sloka of the Manu Samhita. (Vide Mathuranath's Edition of Manu Samhita.—"Vrihaspati, too, says:—The superiority of Manu is

<sup>1</sup> भद्यस्य ग्रब्दसूजलात् च ग्रब्द-समिपं स्त्रास्त । १

चित्रा कर्नुं सामान्यात् प्रमाचमनुमानं स्थात् । १

विरोधे जनपैचं स्थात् चापति चानु-सानस्। १

Mimánsá Darsana, Adhyáya I, Pada III, Sutra 1, 2, 3.

Bibliothica Indica ed., Vol. I, pp. 64-66.

<sup>2</sup> त्रुतिरस्हतिपुराचानां विरोधी यम इस्रते। तप त्रीतं प्रमाचनु तयोई धे स्वति-र्वा ॥

Vyása Sanhitá, 1, 4.

<sup>3</sup> यः विश्वत् कस्त्रचिदकी भनुना परिकीर्भितः॥

स सम्बोऽभिहितो वेदे सम्बन्धानमयी हिसः।

Manu II, 7.

Sir William Jones is wrong to render sarvajnanamayah by "perfect in divine knowledge," while it plainly means that the sage was "omniscient." Govindarája thinks it to be an attributive of the Veda itself.

ordained by reason of his having explained the purport of the Vedas; the Smriti is not approved which is contrary to the meaning of Manu.") This doctrine of suppositous texts of Sruti corresponding to existing Smriti texts is an ancient and well-known doctrine. It is laid down in the Aphorisms of Jaimini to which I have already referred. The identical doctrine is thus introduced by Apastamba, in his Dharma Sutra, after reproducing apparently conflicting texts of the Sruti as to the propriety or otherwise of reciting Vedic hymns "when it thunders, when lightning flashes or thunderbolts fall, and when the wind blows violently":—

"If that is done, (if the passage of the Vågasaneyi-Bråhmana is combined with that quoted in Sûtra 5, the former stands) not in contradiction with the decision of the Åryas. (6.)

"For they (who know the law) teach both the continuance and the interruption (of the daily recitation of the Veda). That would be meaningless, if one paid attention to the (passage of the) Vågasaneyi-Bråhmana (alone). (7.)

"For no (worldly) motive for the decision of those Aryas is perceptible; (and hence it must have a religious motive and be founded on a passage of the Veda.) (8.)

"(The proper interpretation, therefore, is, that) the prohibition to study (given above and by the Åryas generally) refers only to the repetition of the sacred text in order to learn them, not to their application at sacrifices. (9.)

"(But if you ask, why the decision of the Âryas presupposes the existence of a Vedic passage, then I answer): All precepts were (originally) taught in the Brâhmanas, but these texts have been lost. (10.)

"Their (former existence) may, however, be inferred from usage." (11.)

<sup>&</sup>lt;sup>1</sup> Institutes of Apastamba. Müller, S. B. E., Vol. II, p. 46-47.

The following comment by Haradattal to the last Sutra Law inferred is very pertinent:-

"How, then, is their existence known?

"They are inferred from usage." "Usage" means the teaching of the law-books and the practice. From that it is inferred that Manu and other (authors of law-books) knew such text of the Brâhmanas. For how could otherwise (Rishis like Manu) teach in their works or practise (such customs) for which no authority is now found? And certainly they were intimately connected with the revealed texts (i.e. saw them).

The canonical ground, however, is not the only one Historical which invites an examination of the Vedas in connection examining with any question of Hindu Law or Usage. Their importance is equally great upon historical grounds as representing the most ancient literature of which we possess written records not only for India but for the whole There cannot be any doubt that most of the human race. European Sanskritists have approached the problems of ancient Indian history with a strong bias, conscious or unconscious, against the antiquity of Indian works on account of the supposed exigencies of the chronology of the Old Testament. Notwithstanding, however, the discrediting of the colossal chronologies of the Puranas the dates approximately assigned to the Vedas by occidental scholars are ancient enough to satisfy the amour propre of any nation whatsoever and to kindle a desire for research in every enlightened mind. I take it, therefore, as established on either ground, that an examination of the Vedas in connection with our present subject will be both interesting and useful. The actual facts discovered might be very few, but in exploring such fields we would be in the position of the geologist patiently sifting the dust of ages in ancient beds, thankful if mere fragments of fossil bones should be discovered, wherewith he could in his imagination conjure up into life a dead and vanished world

<sup>1</sup> Institutes of Ápastamba. Müller, S. B. E., Vol. II, p. 47, note.

and trace the gradual evolutions of those strange organisations into the living types which now surround us on all sides

Germinal ideas of merits of charity.

14. The Rig Veda contains passages extolling the merits of charity. One of them is thus translated by Max Müller: "He who gives alms goes to the highest place in heaven." A fuller translation is given by Wilson in the second volume of his translation of the Rig Veda: "—

"He who propitiates (the gods), gives to the gods, and sits at ease upon the summit of heaven: to him the flowing waters bear their essence; to him this fertile (earth) ever yields abundance." (5.)

"These wonderful (rewards) verily are for those who give (pious) donations: for the donors of (pious) gifts the suns shine in heaven: the givers of (pious) donations attain immortality: the givers of (pious) gifts prolong their worldly existence." (6.)

Two meanings of 'dakshina.'

It will be seen that the two translators differ in the meaning to be attached to gifts, namely, whether the word should be taken in the general sense of alms or in the special sense of religious donations. The former is the literal meaning, although the latter is the interpretation favored by the great exegist Sayana. It can easily be conceived how the original conception should gradually receive a strong religious tincture as much from the general progress of ideas in that direction as from the accident of the use of the word dakshiná for donations in the 6th verse, a word which in later Sanskrit literature is prominently used to denote a present made to Brahmins upon solemn or sacrificial occasions. text, in the case under notice, is, however, more secular than religious, as the gifts extolled in the hymn8 are those conferred on the poet by a king who had taken a fancy for him and married him to the king's daughters.

<sup>&</sup>lt;sup>2</sup> Rig Veda I., 125, 5-6, cited in Chips from a German Workshop, Vol. I, p. 46.

London, 1854, pp. 15-16.

<sup>\*</sup> Wilson's Rig Veda, Vol. II, p. 14.

15. The passages in the later sacred writings of the Religious effi-Hindus extolling the efficacy of gifts as inducing positive merit or as procuring negative benefit in the sense o expiating for evil actions may all be traced to the above germs. Hemádri in the opening chapter of the Dána-khandam of his encyclopedic work quotes a text of the Satapatha-Brâhmana enjoining in the same breath the practice of dama (self-restraint), dána (liberality), and dayá (compassion.)

This seems to be the source of inspiration for the text of Vrihaspati<sup>2</sup>:—

# तपो धर्मः क्षतयुगे ज्ञानं जेतायुगे रुम्दतं। दापरे चाध्यराः प्रोक्षाः कर्लो दानं दया दमः॥

"In the Krita Yuga the prevailing virtue is declared to Their positive be religious austerity; in the Treta, divine knowledge; meritas virtue. in the Dwápara, sacrifices; and in the Kali Yuga, charity (বাৰ), compassion (ব্যা) and restraint of passions (ব্যা)."

Manu, however, beginning with the use of almost identical words, constitutes charity alone the supreme virtue in the degenerate Kali Yuga:—

# तपः परं क्षतयुगे चेतायां चानमुच्यते । द्वापरे यच्चमेवाऊर्दानमेकं कलौ युगे ॥

"In the Krita Yuga the prevailing virtue is declared to be religious austerity; in the Treta, divine knowledge; in the Dwápara, sacrifices; in the Kali Yuga, charity alone." Adhyáya I, sloka 86. The same sloka is repeated by Parásara in his Institutes, I, 22.4

<sup>2</sup> Quoted in Hemádri, Dánakhandam, Bib. Ind., p. 6. text of Vyása. श्रष्ट युगप्राधान्येन बालोक्ता धर्मा उश्यने। तपः परं क्रतयुगे नेतायां ज्ञानस्त्रमं। इपिरे यज्ञमित्याक दानमेन कली स्वतस् इति ॥ Leaf 98.

<sup>&</sup>lt;sup>1</sup> खबार्च सतपय त्रुतिः। तदेतत् षयं शिक्षेत् दसं दावं दयाभिति ॥ Hemádri, Dána-khandam. Bib. Ind., p. 6.

Institutes of Manu, I,86. Quoted in the Dánáchandriká as a

<sup>4</sup> Jagamohan's edition, p. 5.

Yama declares charity to be the special virtue to be practised by householders, grihasthas:—

# यतीनान्तु ग्रामी धर्मस्वनाञ्चारो वनीकतां। दानमेव ग्रञ्जस्थानां शुश्रुवा ब्रह्मचारियां॥

According to Vyása8:-

"What thou givest to proper persons and what thou consumest day to day, that I consider to be thy wealth; the remainder thou preservest for some other person;" and in another passage the same sage<sup>8</sup> quaintly observes:—

## चदाता प्रत्यस्थागी धनं सन्यज्य गच्छति । | दातारं क्रपणं मन्ये स्तोऽप्यथं न सुचति ॥ '

"The man who giveth not in charity is truly liberal, for he departs (this life) leaving his wealth behind him. The charitable man, methinks, is the real miser; he does not leave his wealth even after death," i.e. to say, he continues to benefit by his wealth even in the next world.

negative benefit as an atonement.

Gautama<sup>5</sup> in his Institutes, XIX, 11, mentions the giving of gifts as one of the means for expiating blamable acts, and in Sutra 16 he gives further details thus:—

"Gold, a cow, a dress, a horse, land, sesamum, clarified butter, and food are the gifts (which destroy sin'."

Manu in his Institutes, Adhyáya V, sloka 107, declares that those who have performed forbidden acts are purified by charity; and in another text of the same sage quoted by Jagannatha in his Digest, Book I, Chap. V, sec. III, verse • 206, alms-giving is enumerated in the same connection:—

"By open confession, by repentance, by devotion, and by reading the Scripture, a sinner may be released from

Jagamohan's edition, p. 5.
 Quoted in Hemádri, Dánakhandam, Bib. Ind., p. 6. Also

khandam, Bib. Ind., p. 6. Also quoted with a slight variation in the Dánachandriká : यतीनां प्रसोधर्म

<sup>&</sup>amp;c., leaf 98.

<sup>&</sup>lt;sup>8</sup> Quoted in Hemádri, Dánakhandam, Bib. Ind., p. 5.

<sup>4</sup> Quoted in Hemádri, Dánakhandam, Bib. Ind., p. 7.

<sup>&</sup>lt;sup>5</sup> Müller, S. B. E. Vol. II, p. 272.

Colebrook's Digest of Hindu Law, Madras reprint, Vol. I, p. 214.

his guilt; or by alms-giving, by dominion over the senses, or by a fine to the king (for the word dama admits both senses)."

As Sudras are incapacitated from resorting to some of these means, charity is the sovereign expiation for them. Thus Apastamba having laid down the several means for the twice-born (dwijas) to be purified from contact with a chándála under certain circumstances, proceeds<sup>1</sup>:—

"How is the penance to be performed for a person of the fourth caste? He has neither vrata, nor tapa, nor is there homa for him. The panchagavya cannot be given to him, as he is disqualified from hearing the sacred texts. A Sudra is purified by almsgiving after confessing his sins before Brahmins." And in a similar connection Parasara² says:—"There is no fasting for the Sudra; he is purified by alms given."

16. It is aptly pointed out by Mandlik that it is unfair Gifts not for to charge the Brahmins with the manufacture of these pregrandisement of their own class when Brahmins. their ancient writers discouraged the reception of gifts and laid down minute directions as to the class of persons on whom the gifts were to be bestowed. Thus, for instance, Yajnavalka 3 declares that "a gift should not be accepted by one who is destitute of learning and austerities. Where observance and these two dwell, that is declared to be the fit recipient [of charity], and again:—

"He who being able to accept, does not accept a gift, attains the several worlds which the charitably disposed [attain by their gifts]."

A Brahmin is enjoined on his own part to give alms and perform other acts of charity. Atri in his Smriti Samhita<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Ápastamba Samhitá, Adhyáya V, slokas 4-5.

Institutes, XI, 26:— श्रद्धार्था नीपवासः स्थात् श्रद्धो दानेन

<sup>&</sup>lt;sup>8</sup> Institutes, chap. I, sl. 202. Mandlik, p. 186<sub>•</sub>

<sup>&</sup>lt;sup>4</sup> Institutes, chap. I, sl. 213. Mandlik, p. 187.

Sloka 13.

specifies charity as one of the duties (Karma) of the Brahmin, and the reception of charity as one of his lawful means of livelihood (Vritti), and the same is very clearly put by Manu in his Institutes, I, 88:—

To Brahmins he assigned the duties of reading the Veda, of teaching it, of sacrificing, of assisting others to sacrifice, of giving alms, if they be rich, and, if indigent, of receiving gifts."

Pious works classed into (1) Ishta and (2) Purtta.

From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named ishta and purtta, a classification which has come down to our own times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of ishta and purtta works. In the Rig Vedal ishtápurttam (sacrifices and charities) are described as the means of going to heaven. In commenting on the same passage Sáyana explains ishtápurtta to denote "the gifts bestowed in Srauta and Smarta rites." In the Taittiriya Aranyaka,2 ishtapurtta occur in much the same sense, and Sáyana<sup>3</sup> in commenting on the same explains ishta to denote "Vedic rites like Darsa, Purnamása, &c., and purtta "to denote Smárta, works like tanks, wells, &c." A text of Manu quoted by Hemádri seems, however, to give the purely sacerdotal meaning of the phrase:—"What is given as dakshiná (gift to the priest) and the like when the yajna (sacrifice) has been performed is ishta. The gift that is given outside the vedi (altar) is purtta." Another text of Manu, quoted by Mahes-

Cf. Vyása quoted in Sudrakamalákara, leaf 64-2.

विचित्रि च यहां तत् पौतिकशुदा-

Also quoted in Sudrakamalá kara, leaf 10-2.

<sup>&</sup>lt;sup>1</sup> Mandala, X, 14, 8.

² Prapathaka, X, Anuváka 1, 6. इहापत्ते वक्षभा जातनित्यादि ।

Sayana : रहं दशेपूर्वेतासादि
 त्रोतं करें, प्रावापिक्र्पादि सातं करें।

<sup>•</sup> Hemádri Dánakhandam, Bit. Ind., p. 7. তে যন্ত্ৰী হৰী হৰী বৰি আৰি কৰিছিল

विश्वेदि च यहानं दीचते तत् पीर्णिकं॥

wara in his commentary on the Amarakosha, 1 expands the above definition of ishta so as expressly to include the sacrifice as well as the sacrificial gift: "The presentation of oblations to one fire and the offering of the same to three fires and the gift presented before the altar are called ishtam." The same text is quoted in the Váchaspatyam as of the sage Játukarna, with the following addition:-"(Also) perpetual worship of fire, austerities, rectitude, the following of the Vedas, the entertainment of guests and the sacrifices, these are termed ishtas."

- I have not been able to trace the texts of Manu quoted above by Hemádri and Maheshwara in the text of the Institutes of Manu as now extant; but the quotation in Hemádri begins with what is now verse 227 of the fourth chapter, then is interposed the verse already mentioned, followed by verse 228, after which again a verse is interposed which cannot be traced in the existing text. The two versions are shewn in a note on next page in parallel columns.8

The following text of Sankha, quoted by Hemadri, Enumeration gives the most complete enumeration of ishta works that of Ishta. I know of :-

"He who sacrifices by ishti, pasubandha, cháturmásya and agnishtoma, and the like [rites], is the performer of ishti.

"Agnihotra (perpetual worship of fire), tapas, (austerities), rectitude, the following of the Vedas, átithya (entertaining guests), and the vaisvadeva (sacrifices),these are termed ishta."

"What is sacrificed to one fire, or to three (fires), and what is given inside the sacrificial ground is called ishtam."

1 Amara: विवय जातुक्रमें हैं, पूर्ण चातादि कमें यत्। Kánda II, varga 7, v. 27. सत्यं वैदानाचान्-Maheshwara : यत् ज्ञातुक्में तदिष्ठं कातः। जातुर्यज्ञःकसेदानं। <sup>2</sup> एकाग्रिक्म इवनं नेतायां य**र** 🗯 घते ।

Collating all these texts we arrive at the following enumeration of ishta works:—(1) Vedic sacrifices, &c.;

Let each wealthy man continually and sedulously perform sacred rites (**T**E), and (perform **T**H, i.e.) consecrate pools or gardens with faith; since those two acts, (**TE**ITH), accomplished with faith and with riches honestly gained, procure an imperishable reward. 226.

If he meet with fit objects

4 Hemádri Dánakhandam, Bib.
Ind., pp. 19-20.

ग्रह्मः । इष्टिभिः पशुवन्धेस चातुमास्थैरेजेत् यः ।
सश्चिष्टांमादिभियेशे यजेत च स इष्टवान्॥ १
सश्चिष्टांम तपः सत्यं वेदानाश्चिव
पास्तनं।
सतिय्यंवैश्वदवश्च इष्टमित्यभिष्टीयते॥२

Manu as in the text now extant.

श्रवयेष्टच पूर्नेच नित्यं कुर्योदन निता ।

श्रवाकते द्याचये ते भवतः खागत
र्घनेः ॥ ४॥ २२९ ॥

दानधर्मः निषेवेत नित्यन दिकपी निका

परितृष्टेन भावेन पानमासाच्य

श्रक्तितः॥ २२० ॥

यत्किश्विद्पि दातयं याचितेनानु-सूयया। जत्मतस्यते चि तत्मानं यत्तारयति सुस्रोतः॥ १२०॥

of benevolence, let him continually bestow gifts on them, both at sacrifices and consecrations ( ऐडिकपो निकं) to the best of his power, and with a cheerful heart. 227.

Such a gift, how small soever, bestowed on request without grudging, passes to a worthy object, who will secure the giver from all evil. 228.

एकाग्निकादी यत् कर्म नेतायां यश्व क्रयते। श्वनव्यद्याश्च यहामं दृष्टं तद्भिधीयते ॥ १

The second verse occurs in Atri (44); the third is quoted as from Manu by Maheshwara (ante, p. 19); and both verses are quoted as from Jatukarna in the Jalashayotsargatatvam.

(2) Gifts offered to priests at the same; (3) Preserving the Vedas; (4) Religious austerity; (5) Rectitude; (6) Vaisvadeva, sacrifices; (7) Atithya, hospitality.

For our present purposes the only item with which we are concerned is the last. That is the only living form of *ishtam* which is of practical importance to us.

The words now in common use for guest (atithi) Hospitality as and hospitality (átithya) occur in the Vedas in the same a Vedic sacrisense, thus shewing that this virtue, like many others, is part of the rich heritage descended to the Hindus from their Vedic ancestors. In Rig Veda I, 76, 3, Agni, the fire-god, is invoked to bring down Indra from the heavens, so that the worshippers might "shew hospitality" to him.1 In I, 44, 4, Agni himself is described as "the guest" of man; 2 in I, 73, 1, the same god is described to be resting in the sacrificial chamber "like an honoured guest;"8 and in VII, 3, 4, men are described bidding him "as a stranger in his couch." At first sight it might seem incongruous to enumerate hospitality in the same breath with sacrifices; but in reality the sacred literature of the Hindus treats of átithya as one of the yajnas or offerings, the performance of which is incumbent on every person. The Satapatha Bráhmana (I, 7, 2) contains the following declarations under the heading of "The Chief Offerings":5-

"Verily, whoever exists, he, in being born, is born as (owing) a debt to the gods, to the Rishis, to the fathers, and to men (1.)

"And further, inasmuch as he is bound to practise hospitality, for that reason he is born as (owing) a debt to men: hence when he harbours them, when he offers food

<sup>&</sup>lt;sup>1</sup> Wilson's Rig Veda. London, 1850, Vol. I, p. 199.

<sup>\*</sup> Wilson's Rig Veda, Vol. I, p. 119.

<sup>\*</sup> Wilson's Rig Veda, Vol. I, p. 194.

<sup>&</sup>lt;sup>4</sup> Müller's Ancient Sanskrit Literature, p. 548.

<sup>&</sup>lt;sup>5</sup> Müller's Sacred Books of the East, Vol. XII, pp. 190-191.

to them, it is (in discharge of his debt) to them that he does so. Whoever does all these things, has discharged his duties; by him all is obtained, all is conquered (5.)"

as a common debt to humanity,

- 20. In the *Dharma Sutra* of Apastambal the idea of *Atithya*, being one of the Vedic sacrifices or offerings, is elaborately worked out as an allegory, and the same work contains elaborate rules as to the entertainment of guests. In the *Dharma Sutra* of Baudháyana<sup>9</sup> we find the following:—
- "1. Now these five great sacrifices, which are also called the great sacrificial sessions, are the sacrifice to be offered to the gods, the sacrifice to be offered to the manes, the sacrifice to be offered to all beings, the sacrifice to be offered to men, (and) the sacrifice to be offered to Brâhmaṇas.
- "5. Let him daily give food to Brâhmanas, be it only roots, fruit or vegetables. Thereby he performs that sacrifice to men."

as in expiation of unavoidable sins.

- 21. It will thus be seen that the older writings of the Hindus placed hospitality on the footing of being the discharge of a common debt to humanity. It was classed as one of the Vedic yajnas without any particular reason being assigned for its performance. Later works, however, have sought to place the performance of this and other duties, collectively called the pancha yajna upon a lower moral standard, namely, the necessity of expiating for the sins necessarily committed by every householder through certain media of his house-keeping avocations. This will be apparent from the following texts of Manu<sup>8</sup>:—
- "With the sacred fire, kindled at the wedding, a house-holder shall perform according to the law of domestic ceremonies and the five (great) sacrifices, and (with that) he shall daily cook his food (67.)

<sup>&</sup>lt;sup>1</sup> Prasna II, Patala 3, Khanda 7, Sutras 1-10. Müller's Sacred Books of the East, Vol. II, pp. 116-117.

Prasna II, Adhyaya 6, Nan-

dika 11. Müller's Sacred Books of the East, Vol. XIV, pp. 256-257. Institutes of Manu, III, 67—72.

Bühler, S. B. E., Vol. XXVI, pp. 87-88.

"A householder has five slaughter-houses (as it were, viz.), the hearth, the grinding-stone, the broom, the pestle and mortar, the water-vessel, by using which he is bound (with the fetters of sin) (68.)

"In order to successively expiate (the offences committed by means) of all these (five), the great sages have prescribed for householders the daily (performance of the five) great sacrifices (69.)

"Teaching (and studying) is the sacrifice (offered) to Brahmins, the (offerings of water and food called) Tarpana the sacrifice to the manes, the burnt oblation the sacrifice offered to the gods, the Bali offering that offered to the Bhûtas, and the hospitable reception of guests the offering to men (70.)

"He who neglects not these five great sacrifices, while he is able (to perform them), is not tainted by the sins (committed) in the five places of slaughter, though he constantly lives in the (order of) house(-holders) (71.)

"But he who does not feed these five, the gods, his guests, those whom he is bound to maintain, the manes, and himself, lives not, though he breathes (72.)"

The Satapatha Bráhmaṇa, in describing the ritual for the Soma sacrifice, treats of the átithya-ishti or guestoffering to be made to King Soma, and the context leaves no doubt that the rite is modelled on human conduct on similar occasions. The same offering is dealt with by Ashwaláyana in his Srauta Sutras, IV, 5 (Bib. Ind., p. 304). Although in these passages Soma is conceived of as a king and his honours regulated accordingly, yet the honours so predicated for the king are themselves modelled upon those offered to a common guest; the difference, if any, being one of degree and not of kind. By the Hindu conception the guest himself is a divinity. Manu The guest as a in IV, 251, speaks in the same breath of the worship divinity. of the gods and of guests, ("चर्षिचन् देवनातियीन्") for

<sup>&</sup>lt;sup>1</sup> III, 4, 1, &c. Müller's Sacred Books of the East, Vol. XXVI, pp. 85.

worshipping gods and guests) and in an earlier sloka<sup>1</sup> he is more explicit:—

## चासनाध्रनध्रयाभिरद्भिर्मुलफ्लेन वा । नास्य किच्चदसेद्गेष्टे धिक्ततोऽनर्चितोऽतिथिः॥

which is thus translated by Bühler:-

"No guest must stay in his house without being honoured (architah), according to his ability, with a seat, food, a couch, water, or roots and fruits" (Bühler, p. 133). But something more than honour is meant here. The expression with literally rendered is equivalent to "worshipped." The selection here of the very root with in connection with guests or in respect of both gods and guests as in IV, 251, is apparently intentional. Kulluka in his commentary explains it by the use of the verb un-("under underly underly), which like is used primarily to mean the worship of deities, and conveys the sense of a religious duty or obligation.

Hospitality an imperative duty of Brahmins.

Parasara in his Institutes, similarly, extols the worship of guests as a source of prosperity and enumerates it as one of the six duties (shat-karma), the performance of which is incumbent upon every Brahmin.

Public guesthouses. 23. We have thus far dealt with the virtue of hospitality in its individual and domestic character. It would seem, however, that along with such domestic hospitality there existed from the most ancient times public institutions for the reception and refreshment of travellers. A hymn in the Rig Veda addressed to the Maruts speaks of refreshments being ready at their "resting-places on the road," and Wilson<sup>8</sup> in commenting upon the expression

सन्धा सानं जपी होनः खाधायी देवतार्षनम्। वैश्वदेवातिष्येयस्य पठक्कापि दिने दिने॥१॥६८॥ • Rig Veda, II, 166, 9. Wilson, Vol. II, p. 151.

<sup>&</sup>lt;sup>1</sup> Institutes, IV, 29.

<sup>&</sup>lt;sup>2</sup> षट्कमाभिरतो नित्यं देवता-तिथिपूजकः। इतस्रेषन्तु सुद्धानी ब्राह्मणी नावसी-दति॥ १। २०॥

declares it "worthy of note, as indicating the existence of accommodations for the use of travellers: the Prapatha is the choltri of the South of India, the sarai of the Mahomedans, a place by the road-side where the traveller may find shelter and provisions." In the Introduction to the second volume of his translation of the Rig Veda, Wilson reverts to the same subject in the following terms<sup>1</sup>: "We have mention \* \* \* \* of travellers, and of sarais, or places provided for their refreshment: it is true that in the passage in which they are named the refreshments are said to be provided for the Maruts or the winds, but in this, as in the case of the cities of the Asuras, the notion must have been derived from what really existed: Prapathas, or choltries, were not likely to be pure mythological inventions; those for the Maruts must have had their prototypes on earth."

24. Coming now to the other class of meritorious acts, 'Purtta' disnamely, purtta, we have already seen that they are men-tinguished from 'Ishta.' tioned in the Vedas and explained by the commentators to mean the gifts bestowed in smárta rites; that they are also mentioned in the supplemental literature of the Vedas and there explained in the sense of smarta works like tanks, wells, &c. We have also considered the text of Manu quoted by Hemádri, which defines purtta as the gifts bestowed outside the sacrificial ground. Several other texts bearing upon the same question remain to be considered.

Narada<sup>2</sup>:—"The gift made during an eclipse, or Their relative during the entry of the sun into different solstices, or on merits. the twelfth lunar day and the like is called purttam."

दादम्बादी तु यदानं तदेतत् पर्म-

Cf. text of Játukarna quoted in the Jaláshayotsargatatvam, p. 507:—

पदोपरागे यदानं पूर्त्तित्यशिधीयते।

<sup>&</sup>lt;sup>1</sup> Wilson's Rig Veda, Vol. II, Introduction, p. XVI.

<sup>&</sup>lt;sup>2</sup> Quoted in Hemadri Danakhandam, Bib. Ind., p. 20. Madanaratna and Sudra Kamalakara, leaf 10 2:—

श्रहीपरागं यहानं स्टब्धेसङ्कमणेष च।

Yama<sup>1</sup>:—"The Brahmin should diligently perform works of ishta and purtta. Heaven is attained by ishta; by purtta one enjoys final emancipation. Ishta works depend on riches. Tanks, groves, processions for the gods—these are called purtta works. He who repairs ruined wells with flights of steps, wells, tanks, and temples, enjoys the fruits of performing purtta works."

Varáha Purána<sup>2</sup>:— "Ishta and purtta works are the first means of performing their religious duties for the twice-born classes. By ishta he obtains heaven, and in purtta he attains final emancipation. Wells with flights of steps, wells, tanks, temples and groves are called purtta works."

Vyása<sup>8</sup>:—"Tanks, wells with flights of steps, temples, the bestowing of food, and groves—these are called purttam."

Játukarna<sup>4</sup>:—"Wells with flights of steps, wells, tanks, the gift of food, and the planting of groves are called purtta. \*\*\*\* are called ishta. The gift

र इहापूर्णम् कस्यं त्राचार्यम् प्रवासतः।
देहेन सभते सम्में पर्ण मीचं धमम्भते ॥
﴿८॥
विज्ञापेचं भवेदिष्टं सङ्गां पूर्णमुख्येत च॥
विज्ञापेचं भवेदिष्टं सङ्गां पूर्णमुख्येत च॥
﴿१॥
वापीक्रुपतङ्गानि देवतायतनानि च।
पतितान्युद्धरेद्ध्यस पूर्णप्रवासम्भते॥
००॥
१ दहापूर्णं दिजातीनां प्रथमं धर्मधाभनं।
देखेन सभते समें पूर्णे मोच्छ विन्दति॥
वापीक्रुपतङ्गानि देवतायतनानि च।
खाराम् विग्रेषेच पूर्णं सभे विनिदिग्रेत्॥
Quoted in the Sabdakalpadruma.

٤.

Almost identical words are used in a text which is ascribed in the Madanaratna and the Sudra-Kamalákara to the sage Játukarna, but which is also to be found in the Atri Samhitá:—
वापी क्रूपतझागादि देवतायतनानि च च अप्रदानमारामः पूर्णभित्यभिधीयते ॥

4 वापीक्रूपतझागादि देवतायत्त्रमान्यभिधीयते ॥

4 वापीक्रूपतझागादि देवतायत्त्रमान्यभिधीयते ॥

4 वापीक्रूपतझागादि देवतायत्त्रमान्यभिधी-

Quoted in Hemádri Dánakhandam, Bib. Ind., p. 20.
 पुष्क्रियसणा गायो देवतायतनानि च।
 प्रमुद्धानमणारामाः पूर्त्तमित्यभिषी-

which is made during an eclipse is called purtta. Ishta and purtta are said to be the common duties of the twice-born class. The Sudra is authorised to perform purtta works of religion, but not those appertaining to the Veda."

Sankha!:—"The service of the sick is declared to be 'Purtta' includes relief of the sick.

In this connection, I may mention here that the institu-Hospitals. tion of charitable dispensaries and hospitals (arogyashálás) for the benefit of all castes under the superintendence of skilful doctors, was a well-recognised form of religious charity, as appears from the various texts from Puránas, cited by Hemádri in Chapter XIII of his Dánakhandam.<sup>2</sup>

The following enumeration of purtta works can be com- Enumeration of 'Purtta.' piled from the texts above quoted or referred to:—

- (1) Gifts offered outside the sacrificial ground.
- (2) Gifts on the occasions of an eclipse, solstice and other special occasions.
- (3) The construction of works for the storage of water, as wells, baolis, tanks, &c.
- (4) The construction of temples for the gods.
- (5) The establishment of processions for the honour of the gods.
- (6) The gift of food.
- (7) The relief of the sick.

+++++++इष्टमित्यभिधीयते॥ इष्टोपरामे यहानं पूर्णमित्यभिधीयते॥ इष्टापूर्णे दिजातीनां धर्मेः सामान्य

७ चार्वे। चाधिकारी भवेच्छूड़ः पूर्ते धर्मे न वैदिकेस

Quoted in the Jaláshayotsargatatvam, pp. 506-507. The last line is quoted in Sudra Kamalákara, leaf 64-2, as a text of Játukarna, but in an earlier portion (leaf 10-2) it is quoted as a text of Vyasa and Játukarna. The first two lines are quoted in the Madanaratna and in the Sudra Kamalakára, leaf 10-2.

<sup>1</sup> रोजिणां परिचर्या च पूर्त्तिस्य-भिनिर्दिशेत्।

Quoted in Hemádri Dánakhandam, Bib. Ind., p. 20, and Sudra Kamalákara, leaf 10-2.

<sup>2</sup> Samvartta and Agastya, quoted in Ditto, p. 892; Skandapurána, pp. 894-5. Gifts for proledge.

The bestowal of learning, with the bestowal of moting know-land and cows, forms the group of the three surpassingly meritorious classes of gifts, atidánas, mentioned in an Upanishad of the Sámaveda. Hemádri quotes from Nandipurána, Gárurhapurána, Vrihaspati, and Vishnu-dharmottara, texts extolling the merits of educational gifts. Different rewards for the gift of different vidyás or sciences are mentioned in Devipurána and Nandipurána.<sup>2</sup> The gift of Vedas and of their effigies, the gift of Smritis and Puranas. as also the gift of the hearing of Puranas, are conducive to the earning of religious merits of various degrees of efficacy.<sup>8</sup> Helps to students in the shape of books and writing materials, food, clothing and instruments, land, house, furniture, or fields,—in fact, the gift of everything that contributes to the students' maintenance and well-being or is necessary for the acquisition of the special branch of learning that they study, is productive of great religious merit to the donor who is to reap the heavenly fruits of his charities in the next world.4

<sup>&</sup>lt;sup>1</sup> Hemádri Dánakhandam. p. 19; also Adityapurana, quoted by Hemádri at p. 511.

Hemádri Dánakhandam, pp. 511 & 515.

Ditto, pp. 517, 523, 534 & 540.

<sup>&</sup>lt;sup>4</sup> Ditto, pp. 558-559.

#### "ISHTA."

#### CHAPTER IL

(Lecture II.)

On the Origin of Temples and Image Worship.

Religious motive of existing Hindu endowments, 1.—The present popular religion of the Hindus contrasted with the religion of the Vedas, 2; the Vedic worship and present popular practice, 3.—Origin of priests and temple-structures, 4.—Origin of Imageworship, 5; evidence of Image-worship in Vedic literature, 6; later evidence, 7.—The earliest trace of endowments: "Yogakshema" as expounded in Manu and Mitákshará, different interpretations, 8.—Conclusion: popular sentiment of charity, 9.

1. If we take a careful survey of the existing Hindu The Hindu endowments we shall find that in the great majority of motive for endowments is the cases they are intended for the honor of the gods or essentially the Brahmins. Temples are erected for the worship of particular deities and lands annexed to them for the perpetuation of their worship, generally by Brahmins. It is not uncommon to find temples adjoined to tanks and to bathing ghats in rivers. In numerous cases gifts of land and other valuables are made to Brahmins direct, without the intervention of any divinity. The ruling motive of every Hindu making an endowment is a religious one, namely the acquisition of pious merit or the removal of the effects of sin with a view to happiness in this world and in the next. Of course by the very necessities of the case, the object in cases of death-bed gifts must be solely spiritual benefits in the next life.

Vedic Deities.

The religion of the Vedas differs widely from the "The deities to present popular religion of the Hindus. whom the songs are for the most part addressed are the following:-First Agni, the god of fire. The songs dedicated to him are the most numerous of all—a fact sufficiently indicative of the character and import of these sacrificial hymns. He is the messenger from men to the gods, the mediator between them who with his far-shining flame summons the gods to the sacrifice, however distant they may be. He is for the rest adored essentially as earthly sacrificial fire, and not as an elemental force. latter is rather pre-eminently the attribute of God to whom, next to Agni, the greatest number of the songs is dedicated, viz., Indra. Indra is the mighty lord of the thunderbolt, with which he rends asunder the dark clouds, so that the heavenly rays and waters may descend to bless and fertilise the earth. A great number of the hymns, and amongst them some of the most beautiful, are devoted to the battle that is fought because the malicious demon will not give up his booty; to the description of the thunderstorm generally, which with its flashing lightnings, its rolling thunders, and its furious blasts made a tremendous impression upon the simple mind of the The break of day, too, is greeted; the dawns are praised as bright, beautiful maidens; and deep reverence is paid to the flaming orb of the mighty sun, as he steps forth vanquishing the darkness of night and dissipating it to all the quarters of the heavens. The brilliant sungod is besought for light and warmth, that seeds and flocks may thrive in gladsome prosperity."1

Besides the three principal gods, Agni, Indra, and Surya, the hymns of the Veda sing the praises of a great number of other divinities, chiefly, "the Maruts, or winds, the

<sup>&</sup>lt;sup>1</sup> Weber's History of Indian Literature, 2nd edition, 1882, p. 46.

faithful comrades of Indra in his battle; and Rudra, the howling, terrible god, who rules the furious tempest." 1 According to Yáska, the famous etymologist of the Vedas, whose Nirukta is the only treatise of its kind which has survived to our day, there are in substance only three gods in the Veda:—Agni on the earth, Váyu or Indra in the sky, and Surya in heaven, of each of whom there are many appellations expressive of his greatness and of of the variety of his functions." The number of Vedic gods is given at thirty-three,8 increased millionfold in more degenerate times. "The divinities worshipped (in Their position in later the Veda) are not unknown to later systems, but they systems. there perform very subordinate parts, whilst those deities. who are the great gods—the Dii majores—of the subsequent period, are either wholly unnamed in the Veda, Deities unor are noticed in an inferior and different capacity. The Vedas. names of SIVA, of MAHADEVA, of DURGA, of KALI, of RAMA, of Krishna, never occur, as far as we are yet aware: we have a RUDRA, who, in after-times, is identified with SIVA, but who, even in the Puranas, is of very Siva. doubtful origin and identification, whilst in the Veda he is described as the father of the winds, and is evidently a form of either AGNI or INDRA; the epithet KAPARDDIN, which applied to him, appears, indeed, to have some relation to a characteristic attribute of SIVA,—the wearing of his hair in a peculiar braid; but the term has probably in the Veda a different signification—one now forgotten, although it may have suggested in after-time the appearance of SIVA in such a head-dress, as identified with AGNI; for instance, KAPARDDIN may intimate his head being surrounded by radiating flame, or the word may be

V, p. 8.

p. XXXIX; Muir's Texts, Vol.

<sup>&</sup>lt;sup>1</sup> Weber's History of Indian Literature, 2nd edition, 1882, p. 40.

Quoted in Wilson's translation of the Rig Veda, Vol. I,

<sup>8</sup> Muir's Texts, Vol. V, p. 9.

Lingam,

ľrimúrtti.

an interpolation; at any rate; no other epithet applicable to Siya occurs, and there is not the slightest allusion to the form in which, for the last ten centuries at least, he seems to have been almost exclusively worshipped in India. that of the Linga or Phallus: neither is there the slightest hint of another important feature of later Hinduism, the Trimúrtti, or Tri-une combination of BRAHMA, VISHNU, and SIVA, as typified by the mystical syllable Om, although according to high authority on the religions of antiquity. the Trimúrtti was the first element in the faith of the Hindus and the second was the Lingam." Vishnu appears in the hymns as one of the minor divinities - a manifestation of the sun-god and the useful friend of Indra. idea of his incarnations which occupies so large a portion of the latter-day creed is entirely absent in the Veda proper. His three steps—Tri-vikrama—are identified with "the different positions of the sun at his rising, his culmination and his setting," and in the same connection commentators explain Vishnupada to mean the meridian sky and gayasira the hill of setting. In the Satapetha Brahmana, Vishnu is said to have been a dwarf, and it is only in the epicapoems that we can find the dwarf combined with he three steps to build up the present story of the Vámana Avatára or Dwarf incarnation of Vishnu. sîrsha and Vishnu-pada have become the subjects of a separate legend sanctifying Gayá as a place of pilgrim-

age for the performance of sráddhas, for the benefit of the souls of deceased ancestors. Amongst others this legend is given in the Gayá Máhátmya portion of the

Wilson's Rig Veda, Vol. I,

Váyu Purána.6

pp. XXVI....XXVII.

\* Muir's Texts, Vol. IV, pp.
68, 78, 86, 91.

<sup>8</sup> Muir's Texts, Vol. IV, p. 66.

Muir's Texts, Vol. IV, p. 65.

<sup>&</sup>lt;sup>5</sup> Muir's Texts, Vol. IV., p. 123.

<sup>6</sup> Shabdakalpadruma, Vol. II, pp. 970-2.

### In the Rig Veda; 1, 61, 7; it is said that

\* Vishnuh......vidhyad varáham.

Vishnu pierced (the) Varáha, and Wilson in his translation makes this mean that Indra, the pervader of the universe, pierced the cloud, Varáha being one of the ... recognised synonyms for megha in Vedic lexicography." Dr. Muir, however, translates the passage to mean that Vishnu pierced the boar. I think the meaning given by Wilson is the earlier and the truer meaning, although in the later hymn (Rig Veda, VIII, 66,10,) I accept Dr. Muir's rendering of Varáha by & hog. "The wide-striding Vishnu, urged by thee, O Indra, carried off all [these things],—a hundred buffatoes, broth cooked with milk, and a hog Emusha." Muir, with some hesitation, renders the last word as "fierce," and most likely he is right. Satapatha Brahmana, however, the legend has so far decayed that it is said "formerly this earth was only so large,". of the size of a span. Emusha, a boar, raised her up." 4 In the Taittiriya Brahmana, this boar (Varáha) is identified with Prajánati and even in the Rámayana the legend is continued in that form, the boar being described as a manifestation of Brahmá and not of Vishnu, and it is only in later times that we hear of the boar-incarnation of Vishnu. Krishna, Devakiputra, the son of Devaki, is Krishna, mentioned in the Chhandogya Upanishad not as an incarnation of Vishnu, but only as a scholar eager after the pursuit of knowledge and belonging perhaps to the military And as for Káli, the Mundakopanishad describes Káli. caste.6 her, along with Karáli, as one of the seven tongues of fire, and not as a separate and powerful divinity.

<sup>&</sup>lt;sup>1</sup> Rig Veda, Vol. I, p. 163.

<sup>&</sup>lt;sup>2</sup> Muir's Texts, Vol. IV, p. 67.

<sup>8</sup> Muir's Texts, Vol. IV, p. 91.

<sup>&</sup>lt;sup>4</sup> Muir's Texts, Vol. IV, pp. 27 28.

Muir's Texts, Wol. I, pp.

<sup>. 6</sup> Weber's History of Indian Literature, p. 71; Muir's Sanskrit Texts, Vol. IV, p. 183.

Vedic worship and modern practice compared.

The forms of worship prevailing in the Vedic age were also widely different from that prevailing at present under popular practice. The worship which the hymns describe 1 "comprehends offerings, prayer, and praise; the former are chiefly oblations and libations,—clarified butter poured on fire, and the expressed and fermented juice of the soma plant, presented in ladles to the deities invoked, in what manner does not exactly appear, although it seems to have been sometimes sprinkled on the fire, sometimes on the ground, or rather on the kusa, or sacred grass, strewed on the floor, and in all cases the residue was drunk by the assistants. The ceremony takes place in the dwelling of the worshipper, in a chamber appropriated to the purpose and probably to the maintenance of a perpetual fire, although the frequent allusions to the occasional kindling of the sacred flame are rather at variance with this practice. There is no mention of any temple, or any reference to a public place of worship, and it is clear that the worship was The worshipper, or Yajamana, does not purely domestic. appear to have taken of necessity any part personally in the ceremony, and there is a goodly array of officiating priests, -in some instances seven, in some sixteen-by whom the different ceremonial rites are performed, and by whom the mantras, or prayers, or hymns are recited. That animal victims were offered on particular occasions, may be inferred from brief and obscure allusions in the hymns of the first book, and it is inferrible from some passages that human sacrifices were not unknown, although infrequent and sometimes typical; but these are the exceptions, and the habitual offerings may be regarded as consisting of clarified butter and the juice of soma plant."

Temples not mentioned in Vedas.

The institutio.
of priests by
Vedic people.

4. Although the Vedic worship of fire and of the elements was in its origin patriarchal and domestic, there

<sup>&</sup>lt;sup>1</sup> Wilson's Rig Veda, Vol. I, xxiii, xxiv.

is evidence in the hymns themselves of a later tendency to establish an elaborate priestly organisation. It is remarked by Eggeling in the Introduction to his translation of the Satapatha Brahmana, that, "from clear indications in not a few hymns of the Rig Veda, it appears that a distribution of the sacrificial functions among different classes of priests had taken place before the final reduction of that collection." 2 The fire-god, nevertheless, did not require a temple to be built for him.3 The ordinary daily sacrifices were performed in the house, and from their simple character required not the assistance of a ministering priest. The fire was accommodated in a separate shed-attached to the residence of the worshipper. Even in the case of the greater sacrifices instituted by rich and powerful individuals temporary constructions sufficed for the Yajnasálá or the Hall of Sacrifice.4 The state of society in the Vedic period was partly pastoral and partly agricultural. lages (gráma) are mentioned several times in the hymns, Their comand in one place it is said that Indra demolished a hundred petency to erect temples cities of stone, an expression which could hardly have been used even for a mythological purpose, unless the Rishi had some knowledge of stone structures and before his mental if not his actual vision prototypes in stonebuilt cities on the earth. In other places iron cities or fortifications and cities with a hundred enclosures or fortifications are mentioned, doubtless in mythological or figurative senses, but nevertheless the use of such mythologies or figures of speech suggests the idea of forts or fortified cities as actually existing in the country at that time. Bricks (ishtaka) are frequently mentioned in the Brahmanas as used for the construction of vedis or altars, but it

<sup>&</sup>lt;sup>1</sup> Wilson's Rig Veda, Vol. II, Introduction, p. 1.

East, Vol. XII, p. 15. <sup>8</sup> Müller's A. S. L., p. 204.

<sup>&</sup>lt;sup>2</sup> Müller's Sacred Books of the

<sup>4</sup> Muir's Texts, Vol. V, p. 451.

but temples were not required. does not clearly appear whether they were baked or not. Altogether there cannot be any doubt that the Vedic people were quite competent to erect temples, but they did not raise them because of the peculiar nature of their worship at that time which did not then require such edifices.

Image-worship in Vedic period,

denied by Müller.

Muir's view.

Dr. Bollensen's linguistic proof

Closely connected with the question of temples is the question whether the Vedic Indians made images of their gods? Max Müller answers firmly in the negative. "The religion of the Veda," says he, "knows of no idols. The worship of idols in India is a secondary formation, a later degradation of the more primitive worship of ideal gods."1 On the other hand Dr. Bollensen, on the authority of texts, some of them given in the fifth volume of Muir's Sanskrit Texts, is of opinion that the hymns contain clear references to images of the gods, and Muir himself leaves the question open, preferring to hear what the other side have to say to Dr. Bollensen's specific authorities. It is not necessary here to enter into any detailed examination of these texts, but it will be sufficient to say that they do not necessarily and irresistibly lead to the desired conclusion, but are quite susceptible of a meaning quite in harmony with the traditions of oriental commentators and with the opinion deliberately expressed by so eminent an authority on the Vedas as Max Müller. The gods are described in the hymns with many human attributes—a necessity of the human mind and language—but it does not necessarily follow therefrom that images of those gods clothed in such human attributes were artificially prepared and worshipped. Dr. Bollensen argues from the fact of the Vedic gods being called divo naras, "men of the sky," or nripes'as, "having the form of men," that the Indians

did not merely in imagination assign human forms to

<sup>&</sup>lt;sup>1</sup> Chips from a German Workshop, Vol. I, p. 38,

<sup>9</sup> Muir's Texts, Vol. V, p. 453.

their gods, but also represented them in a sensible manner. impeached by I confess my inability to follow the latter part of the argu-a comparison of Biblical ment. By parity of reasoning, when the Book of Genesis phraseology. speaks—

"And God said, Let us make man in our image, after our likeness.

So God created man in his own image, in the image of God created he him. \* \*"1

—we ought to assume that in the time of Moses the Jews worshipped their God by making human images.

It would be equally reasonable to argue from expressions like the following in the Psalms of David:—

- "The LORD is in his holy temple, the LORD's throne is in heaven: his eyes behold, his eyelids try, the children of men." ?
- "Keep me as the apple of the eye, hide me under the shadow of thy wings." 8
  - "In my distress I called upon the LORD and cried unto my God: he heard my voice out of his temple, and my cry came before him, even into his ears." \* \*
    - \* There went up a smoke out of his nostrils, and fire out of his mouth devoured: coals were kindled by it.
  - "He bowed the heavens also, and came down: and darkness was under his feet.
  - "And he rode upon a cherub, and did fly: yea, he did fly upon the wings of the wind." \* \*
- "Yea, he sent out his arrows, and scattered them," 4—and so on,—that the Jews in David's time worshipped their national god, as a visible image with hands and feet and wings, riding on a cherub and holding arrows in his hands.

<sup>&</sup>lt;sup>1</sup> Chap. 1, verses 26, 27.

<sup>&</sup>lt;sup>2</sup> Psalm XI, verse 4.

Psalm XVII, verse 8.

Psalm XVIII, verses 6, 8, 9, 10, 14.

Later but unequivocal eviliterature.

It must, however, be freely admitted that in the later dence in Vedic Vedic literature there is unequivocal evidence of the existence of images of gods and of temples raised for their accommodation. Thus in the Adbhuta Brahmana of the Sama Veda, which is devoted to the enumeration of the untoward occurrences of daily life, omens and portents, along with the rites to be performed for averting their evil consequences, the quaking of temples, and the laughing, singing, dancing, breaking, sweating, and twinkling of divine images is expressly mentioned and provided for:-

# देवतायतनानि कम्पनी, दैवतप्रतिमा इसन्ति गायन्ति दृखन्ति स्फुटन्ति खिद्यन्युन्भीवन्ति निमिवन्ति । &c., &c., 2

and a similar provision is made in the Adbhutádhyáya or the Chapter on Omens and Portents in the Kausika Sutra which, according to Weber, is the sole existing ritual sutra of the Atharva Veda<sup>3</sup>:--

# "खय यत्रैतहैवतानि खलन्ति चातिन्त इसन्ति गायन्ति वानानि वा रूपाणि कर्वन्ति"। &c. 4

Similar evidence in Gautama Dharma Sutra.

In the Dharma Sutra of Gautama, "temples of the gods" are enumerated amongst the places which destroy sin.—"All mountains, all rivers, holy lakes, places of pilgrimage, the dwellings of Rishis, cow-pens and temples of the gods (are) places (which destroy sin)." 5

And in an earlier Sutra, in laying down the rule of the road, Gautama directs that temples of gods should be passed to the right—a direction which later on developed into the practice of perambulation to the right side प्रदक्षिणं:-"He shall pass excellent (being and things), auspicious

<sup>&</sup>lt;sup>1</sup> Weber's History of Indian Literature, p. 69.

Weber's Adbhuta Brahmaṇa, or Zwie Vedische texte über Omina und Portenta, p. 335.

<sup>8</sup> Weber's History of Indian

Literature, p. 152.

<sup>&</sup>lt;sup>4</sup> Zwie Vedische texte Omina and Portenta, p. 367.

<sup>5</sup> Gautama, Ch. XIX, S. 14; Müller's S. B. E., Vol. II, p. 273.

(objects), temples of the god, cross-roads, and the like with his right turned dowards them." 1

Images of the gods are specifically mentioned in the same Dharma Sutra under a rule relating to calls of nature and another relating to the stretching out of feet in a particular direction.—" Facing or within sight of wind, fire Brahmanas, the sun, water, (images of the) gods, and cows, he shall not eject urine or fæces or other impurities." "He shall not stretch out his feet towards those divine beings." And the same rules are repeated in the Dharma Sutra of Ápastamba:—

He shall not void excrements facing the fire, the sun, In Apastamba. water, a Brâhamaṇa, a cow or (image of) the gods.

"If possible, he shall not stretch out his feet towards a *fire*, water, a Bráhmaṇa, a cow (image of) the gods, or a door."<sup>8</sup>

8. The earliest trace of endowments is to be found in Earliest trace a rule of the Gautama Dharma Sutra in connection with ments.

partition of inheritances:—

"Water for (property distrained for) pious uses or Impartibility sacrifices, and prepared food shall not be divided." The of 'Yôga-cshema.' terms used in the text for (property distrained for) pious uses and sacrifices are Yôga and Cshema. The identical terms occur in Manu, Ch. IX, S. 219, and also in Mitâk-Different insharâ in the enumeration of effects not liable to partition. terpretations. The terms are capable of different interpretations, but the following explanation by Vignâneshvara is the most reasonable and adopted by Haradatta and Nanda Pandita on the parallel passages of Gautama and Vishnu:—

"The term Yôgacshema is a conjunctive compound resolvable into Yôga and Cshema. By the word Yôga is signified

<sup>&</sup>lt;sup>1</sup> Gautama, Ch. IX, S. 66; Müller's S. B. E., Vol. II, p. 223.

<sup>&</sup>lt;sup>2</sup> Gautama, Ch. IX, ss. 12, 13; Müller's S. B. E., Vol. II, p. 218.

Apastamba, I, p. 11, k. 30, s.
 20 & 22. Müller's S. B. E., Vol. II, pp. 95-96.

<sup>&</sup>lt;sup>4</sup> Müller's S. B. E. Vol. II, p. 306.

a cause of obtaining something not already obtained, that is, a sacrificial act to be performed with fire consecrated according to the *Veda* and the law. By the term *Cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained; such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as *Laûgácshi* declares: 'The learned have named a (*purtta*) conservatory act *Cshema*, and a sacrificial one *Yôga*; both are pronounced indivisible: and so are the bed and the chair.'

"Some (Medhatithi and the Calpataru) hold, that by the compound term Yôgacshema, those who effect sacrificial and conservatory acts (Yôga and Cshema), are intended, as the King's counsellers, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things are meant." 1

Bühler, agreeing with the commentary of Vignânesvara, observes: "I prefer it to all others, chiefly on account of the explicit passage of Laûgácshi which Vignânesvara quotes. In its favor speaks also that numerous royal grants allow villages or land to Brahmanas and their descendants for the performance of certain sacrifices, or for charitable purposes, such as the daily distribution of food (annasuttra or sadavrata), and that the occurrence of a rule in the Smritis, declaring property given under such conditions to be impartible, is no more than might be expected." 2

To the Smriti of Laugácshi, quoted above, Nila Kantha in his Vyavahára Mayukha further adds: "There Purttam means a tank, garden, &c., and Ishtam a sacrifice, a feast to Brahmaṇas, and the like. The meaning is, whatever

<sup>&</sup>lt;sup>1</sup> From Colebrook's Mitâksharâ, Ch. I, 4—23 & 24, pp. 275-6.

<sup>&</sup>lt;sup>9</sup> See Bühler's Menu, p. 379 note to s. 219.

LEC. II. ANCIENT ORIGIN OF CHARITABLE INSTITUTIONS. 41

wealth has been given up and set apart for such purposes with the consent of all when in an undivided state by a (certain) man, it should be used by that alone for that same charity, and not by another, nor by all together."1 The Hon'ble V. N. Mandalik, however, in his translation of the original text of Menu, quoted by Nila Kantha, translates the word Yôgacshema by "sacrificing priests." His rendering thus differs from that of Vignânesvara and is based on Kullukabhatta, the Smriti of Laugákshi being quoted as authority by both.3

9. One thing, however, is plain: that public charitable Conclusion. institutions were endowed in a recognised form from the very earliest age of Hindu religion, and the greatest merit was attached to their creation and maintenance. religious zeal for the preservation of their sanctity gave rise to fixed rituals and ceremonies. With the natural decay of religion, more elaborate rules were framed for the determination, founding or institution, construction and renunciation of temples and other public charitable "In course of time, deterioration set in. Virtue, the endowments. Still the original principal lives, though it will avoid noise latent principle of charity. and fashion." So says the Hon'ble V. N. Mandalik, and he sums up the true popular sentiment in the following lines :-

### "खष्टादभ्रपुरायानां सारसारं समुद्धतम्। परोपकारः पुखाय पापाय परपी इनम् "॥

"The essence of the essence extracted of the 18 Puránas is (that) service to others produces punya (virtue), and injury to others (produces) sin." 8

Mandalik's Mayukha and Yagnavalkya, Mayukha, p. 71.

See Viramitrodaya, 1, 221, p. 1,

and Mandalik's ditto, p. 70.

Mandalik's ditto.

Appendix II, p. 333.

#### CHAPTER III.

(Lecture III).

#### On the Construction of Temples.

onstruction of temples, the most common form of endowment, 1; texts extolling THE MERITS of construction and dedication, 2; proportion of merit to materials used in construction, 3.—GENERAL RULES OF BUILDING Vastus (houses) applicable, - texts directing the proper TIMES FOR CONSTRUCTION, 4; dissent of Raghunandana and his explanation, 5.—Selection of site, 6; rules in Mánasára and other authorities, 7; colour and smell, 8; taste, shape and other qualities of the soil, 9; other tests, 10; the rationale of the tests, 11; tests of fertility, 12,-and of solidity, 13; a universal maxim of selection, 14. Effect of the progress of society and religion, 15; special rules as to site of temples, 16; fit surroundings, 17; directions for temples of special deities, 18; location of domestic chapels, 19.—CLEANING AND PURIFYING THE SOIL; the old practice of ploughing the land and the modern ceremony of bhumiparigraha, 20; further details of ploughing, 21; sowing of seed and grazing of crop by cattle, 22; ascertaining cardinal points, 23; feeding Brahmans on the soil,—eradicating underground 'salyas' or 'thorns,' 24.—THE VASTU-YAGA; the vedic conception of a Vastospati, 25; the sacrifice according to Gobhila, 26; other directions in Ashwaldyana, 27; modern practice as regards the time for the sacrifice, 28; the Vastu-purusha, 29; the modern ritual of the Yaga: preliminaries, 30; specific ceremonies,—drawing the Vastu Mandala and worshipping its deities, on it, 31;—or before Saligram, in case of Inability, 32; the homa, 33; the omen of floating flowers, 34; conclusion, 35.—Selection of materials, as timber, 36.—The ceremony of Sild-nydsa, 37; rules as to the substance, 38; the ritual, 39.—RULES OF ARCHITECTURE: on the direction of doors and construction of temples, 40.—The common form of Bengal temples, 41.—THE PRATISHTHA or consecration of temples analogous to the griha pravesha of Vastus, 42.

Erection of temples.

1. The erection of temples is the most common form of endowments prevalent amongst the Hindus in the present day, and I propose therefore to deal with these in the first instance.

2. The religious merit acquired by the construction of a I. Texts on temple and its dedication to the worship of particular merit. divinities is extolled in numerous sacred texts.

Vishnu Rahasya¹:—"Those who in the sports of child-Acquiring the deity's region hood create out of dust a temple for Vásudeva, even and freedom from sin.

Agni Purana<sup>3</sup>:—" Of those persons who are ever contemplating the construction of a temple for Hari, the sins of a previous hundred births are destroyed."

Narasinha Purana<sup>3</sup>:—"Whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated; what then shall be said of finishing the structure according to rule. Beyond description is the wealth of religious merit acquired by the person who makes an abode of Vishnu of eight bricks. The merits accruing from extensive buildings can be presumed in proportion. He who dies after making the first brick (for the construction begin-

He who dies after making the first brick (for the construc-Merit of be tion of a temple) obtains the religious merit of a completed ning only. Yajna."

यात् ॥

<sup>2</sup> Quoted in श्रीदरिभक्तिविद्याच. p. 694. वास्त्रे संज्ञीसमाना ये पांत्राभिर्भवनं चरेः । वासदेवस्य क्रव्यंक्ति तेंऽपि तक्कोक-गामिनः ॥ <sup>2</sup> ये ध्यायन्ति सदा बुद्धा करिष्यामो चरेग्टंचं। वेषां विक्रीयवे पापं पूर्वजनाशतोङ्गवं॥ Quoted in श्रीहरिभित्तिविखास. p. 693. <sup>3</sup> यः कुर्य्याच्छोभनं वेद्मा नरसिंहस्य भिक्तमान। सर्वेपापविनिर्भृक्ती विव्यक्तीकमवाञ्

देशमारं करोमीति मनसा यसु चि
कायेत्।

तस्य कायमतं पापं तदका विप्र

कायति॥

छते तु किं पुनसस्य प्रासादे विधि- नैक तु॥

चारेखना समायुक्तं यः कुर्योद्धियावं

ग्रदं।

न तस्य पासस्य पितृक्कं ग्रस्कोत केन

चितृ॥

सनेनेवानुमेयन् पासं प्रासाद-विखारातृ॥

सरण्ड व्रजेन्मचीं यः छला प्रयमेर्टकां।

Vishnu<sup>1</sup>:—"A man attains the regions presided over by that deity whose temple he erects."

Yama<sup>2</sup>:—"By erecting temples for the gods, by consecrating their images and by adorning them with various paintings, the dedicator obtains the regions dedicated to those deities."

Salvation of self and generations. Vamana Purana<sup>8</sup>:—"He who causes the construction of a temple for Mádhava, conquers the eternal abodes of purity. \* \* \* \* The establisher of a temple for Vishnu procures the salvation of himself and of eight generations above his grandfather. Thus, a song by the ancestors (says): 'May some one be born in our race a worshipper of Vishnu, the performer of pious acts, who may establish a temple for Hari.'"

Agni Purana\*:—"The man who causes a temple to be built for Hari, carries to the mansion of Vishnu ten Irrespective of thousand past and future generations. Whether a temple cost, and status of constructor is built for Hari by the expenditure of a lakh or a thousand or a hundred or a fifty, the merit is the same here for the rich and the poor, respectively."

1 यस्य देवस्थायतमं करोति स तक्काकमाञ्जीति। Quoted in the सठप्रतिष्ठातस्तं p. 667. 2 छत्ना देवाख्यं सब्बं प्रतिष्ठस्य स देवतां। विधाय विधिवश्चितं तक्कां विन्दते भुवं ॥ Quoted in the सठप्रतिष्ठातस्तं p. 667. 3 यः कारयेकान्दिरं माधवस्य पुष्णान् स जयेच्हाश्चतान् वै। \* \* \* \* \* \* \* \* \* \* \* पितासदस्य पुरतः कुलान्यहो स्यानि तु। तारयेदाताना सादं विष्योमेन्दिर-कारकः॥ विश्व पिद्धगाणा।

श्विप नः स्वकुकी कश्विद्धिष्णुभक्को भविध्वित ।

श्विमन्दिरकत्तां यो भविष्यति ग्रुणिव्रतः ॥

Quoted in श्रीश्विरभितिविद्यास, p. 69%

4 समतीतं भविष्य कुलानामयतं

नरः।

विष्णुकोकं नयत्याग्रु कारियता श्ररेः ॥

श्वेषाण सहस्रेष ग्रवेनार्डेन वा श्ररेः ॥

quoted in श्रीश्विभितिविद्यास,

pp. 693-694.

Bhavishya Purana<sup>1</sup>:—"The religious merit accruing from (the expenditure of) a small or great amount of wealth (in the construction of a temple) is the same for the poor and rich (according to their means").

Skanda Purana 2:—"On beginning the construction of a temple for Krishna, the sins committed in seven births are annihilated, and the ancestors rescued from hell. For each particle of dust resting at the foot of Krishna's temple, the endower dwells a thousand years in the mansions of Vishnu. He who causes paintings in the temple of Krishna, dwells in the mansions of Vishnu as long as the oceans last."

3. Bhavishya Purana!:—"The merit of constructing a Merit proportemple of wood is ten million times that of an earthen one. The merit in a brick house is a hundred billion of times. The wise know the merit in a structure of stone to be two hundred thousand billions. The merit for rich and poor is the same in stone and earthen structures."

It may be inferred from the form of the Sankalpa<sup>4</sup> or the declaration of purpose that the consecrator of a

<sup>1</sup> कस्पतव-भविष्यपुराणम्। खक्पे महति वा विशं फलमाद्य दरि-इयोः । Quoted in the मठप्रतिष्ठातचं, p. 667. ·<sup>2</sup> चारको क्रव्यधिव्यास्य सप्तजनानि यत्रकृतं । पापं विख्यमाञ्जेति नरकाद्दरेतृ पितः ॥ प्रासाद-पादे छम्पासा यावत्तिष्ठि नि रेषकाः। तावद्वपेसद्याणि वसते विकासद्मनि॥ प्रासारे ख्रम्यादेवस्य चित्रकर्मे करोति वसते विव्यक्तोके यावशिष्ठन्ति सा-गराः ॥

Quoted in श्रीइरिभिक्तिविद्यास, p. 694.

<sup>8</sup> कल्पतव-भविष्णुराणं। च्राप्तयात् कोटिगुणितं फलं स्वादा-बिक्षः हुते। कोटि कोटि गुणं पुष्णं फलं स्वादिष्ट-कास्त्रये॥ दिपरादेगणं पुष्णं भेसले तु विदुवं भाः। स्व स्क्रियोः समं न्नेयं पुष्णमाबादरि-क्रयोः॥ Quoted in सटप्रतिष्ठातस्त्रं। p. 667.

Quoted in सद्यातष्ठातचा | p. 667.

4 See extracts from सदाद्यितिष्ठा
प्रयोगतचं ।
Sabdakalpadruma, loc. सद,
pp. 3154, 3168.

temple built of such perishable materials as thatch or wood is promised heavenly bliss for years ten thousand times the number of atoms composing the sacred structure, and in the case of more permanent materials like bricks the reward is tenfold greater and for stone the merit is again multiplied tenfold.

The rule of proportion is more elaborately worked out in the Vishnu Dharmottara¹:—"Having built a temple for that supreme deity (Vishnu), the builder acquires the religious merit of the Rájasuya and Aswamedha sacrifices. This virtuous reward I have stated for an earthen structure. In case of a wooden structure the merit is hundredfold. In case of stone the merit again is tenfold of the preceding one,—tenfold of that in the case of iron, which again is multiplied hundredfold for copper. By the use of silver the builder mutiplies the merit a thousandfold, and verily in the case of gold it is again mutiplied a hundred thousandfold. By adorning with beautiful gems, the builder obtains eternal bliss."

II Selection of time. General rules for houses applicable.

4. The words used in the ancient literature of the Hindus for the temples of their gods denote the residence of the god. As the house of god, the temple comes under the operation of many rules relating to houses in general, to which are added some special rules relating to the former.

1 विष्णुधर्मीत्तरे हतीयकाष्टे।
काला वासम्यस्तित्वस्य परमेष्ठिनः।
राजस्य प्राचनेधानां फलीन सस् युध्यते ॥
सुरवेग्रानि यावन्तो दिनेन्द्राः परसाणवः।
तावद्वेसस्ताणि स्वर्भस्तोने मसीयते॥
प्रासादे स्टब्सये पुष्णं स्वर्गतत् कथितं
दिजाः।
तस्ताद्द्वस्य पुष्णं स्वर्गत् स्वर्गः।
तस्ताद्द्वस्य पुष्णं स्वर्गस्त्रगुणं भवेत्॥

ततो दशगुषं पुष्यं तथा शैलमये भवेत्। ततो दशगुषं लोहे ताहे शतगुषं ततः॥ सहस्वमुष्यं ततः॥ सहस्वमुष्यं ततः॥ सहस्वमुष्यं ततः॥ सहस्वमुष्यं दे तीयेषे दिजसम्माः॥ समन्यक्षमाञ्जीत रत्नि ने मनोहरे॥ Quoted in श्रीहरिअक्किनिकास, p. 694.

The time for the construction of houses is the subject of Auspicious numerous texts, mostly on astrological grounds. The following texts, though relating to houses in general, are adduced by Gopala Bhatta apparently to indicate the proper time for the construction of temples also!:—

Matsya Purana<sup>2</sup>:—If a house (of god) is built by a Months. person in Chaitra, he gets disease; if in Baisákh, he gets money and jewels; in Jyaistha, death; in Ashádh, servants and jewels, but no beasts; in Srában, friendship; in Bhádra, loss (of friends); in Asvin, death of a wife; in Kártik, money and crops; in Agraháyana, a devotee; in Paush, there will be fear from thieves; but he will

<sup>1</sup> Cf. "उटहेष यो विधिः प्रोक्तो विनिवेशप्रवेशयोः। स रव विशुषा कार्य्यी देवतायतने-क्रत्यचिनामणी। Raghunandana-Jyotistattvam, p. 290. <sup>2</sup> "चैने चाधिमवाप्रोति यो स्टइं कारयेद्वरः। वैशाखे धनरतानि खेष्ठे सत्यं तर्थेव चावाळे स्तारतानि पद्मवर्जनवाजः यात्। त्रावचे मिनलाभं तु शनि भाइपदे तथा॥ पत्नीनामं चास्युने कार्तिके धन-धाम्यकां। मार्गे शीर्षे तथा भक्तं पौषे तख्तरजं भयं ॥ साभं तु बड्डमोविद्यादग्निं माघे विनि-हिँ भ्रेत्। काश्चनं फार्स्यये प्रनानिति कास वसं रस्त्रतं ॥

षिनी रोडियी युक्तसुत्तरा नय-मैन्दवं। खाती इस्रोऽन्राधा च प्रमस्यवे ॥ षादित्य-भौमवर्जन्य सब्बें वाराः ग्राभा-वदाः । व्यतिपातातिग-वक्रवाद्यातग्रह्णानि चित्रके ॥ विष्क्षभगखपरिचान् वर्षे योगेषु का-रयेत् ॥ श्वेत मैंने च माईन्द्रे गान्नव्यांभिजित-तथावै राजसाविचे सक्कर्भे ग्रहमा-रभेत्। चन्द्रादित्यवसं स्तरं ग्राभ-निरीचितं। साभोच्छ्यादि कर्तवसम्यन परिवर्कः येत् ॥" मस्यपुरागे।

Quoted

pp. 694-695

in

**बीदरिभक्तिविसा**स.

Asterisms.

Conjunctions.

know of profits from many directions, and fire in Magh can be looked for; gold in Phalgun and sons; such is told of the effect of (particular periods of) time. The following asterisms are auspicious in commencing a building:-Asvini, Rohini, Mulá, the three Uttaràs, Mrigashirá, Swáti, Hastá and Anurádhá. All days, except Sunday and Tuesday, are auspicious. All conjunctions, except the following, are also propitious: - Vajra, Vyágháta, Shula, Vyatipáta, Atiganda, Vishkumbha, Ganda, and Parigha. A house should be commenced at one of the following parts of the day known as Muhurttas:-Sveta, Maitra, Máhendra, Gandharva, Rohina and also Rája and The erection of pillars should be performed at auspicious lagnas or moments when the Sun and the Moon are favourable; other moments should be avoided."

Lagnas for pillars.

Inauspicious time. Hayasirsha Pancharátra<sup>1</sup>:—"Building operations should not be commenced in the rainy season by a well-informed person; nor at the end of the third part of dark fortnight, and in the first and second part of the bright fortnight. Of the *Tithis*, the fourth, ninth and the fourteenth are to be avoided. Tuesday is also to be left

p. 695.

1 " वास्तुकको न चारश्यं वर्ष।काले विज्ञा नता। कृष्णपचे विभागाने ग्राक्त छादो दितीयके ॥
चतुर्धी नवनी वर्षा तिथिषःपि
चतुर्देशी।
भोनस्य तु दिनं वर्ष्या कर्ष रिष्टि
संज्ञितं॥
चित्यन्तरीचदियोत्येदत्याते भेयपीड़ितां।
उपस्थं परेषापि यतीपातस्तं तथा॥
चन्द्रतारानुकुले च काय्यं कर्षा विजानता।

भुवाणि चान शस्तानि नेश्वतं शकादेवतं॥
पूष्यं पौक्षाञ्च साविनं वाययं वैश्वानं
तथा।
स्थिरांग्रे च स्थिरे सन्नो कर् शोपचयास्म ते ।।
के नेद्रे सौम्यग्रहो यस निकाणे तु सुरोचमः।
पापश्चोपचरस्थाने तदा कः स्यं समारभेत् ।"
स्थापेषें।
Quoted in श्रीहरिभक्तिविसास,

out, for working on that day brings injury (or bad luck), and days taunted with dangers arising out of the earth, sky, or the heavenly bodies, and other calamities (as the death of a friend, &c.), and days marked with the portentous Vyatipâtayoga, and days made ominous by some planet as the Saturn, &c., are to be avoided. A well informed man should do his work when the moon and stars are favourable. And so on. (Here follow some more astronomical details, which the curious may examine in the text given below.)

5. Raghunandana, however, does not admit the appli-Dissent of Raghunan cability of the above text of the Matsya Purana in con-Raghunan nection with temples. In his Vastuyága-tattvam, after having quoted the above text in almost the same words, he proceeds thus:—

"The results ascribed to the months of Chaitra, &c., appertain to a human dwelling. In the case of a temple (devagriha), however, on account of the supremacy of the time for the consecration (pratishthá) that time is adopted: Thus, too, a text of the Devi Purána quoted in the Kalpataru:—'That time, which is proper for the planting of the consecration (pratishthá) flag of a god, is also auspicious for laying the foundation-stone (of the temple) of that god.'"

Again, in his Jyotistattvam, Raghunandana observes that the Matsyapurána has laid down that the months of Mágha, Phálguna, Chaitra, Baisákha, and Jyaistha only are auspicious for pratishthás of all gods. In the Pratishthá Samuchchaya, however, there is a direction that even the month of Ashádha is eligible for pratishthá, whereupon the Devi Purána declares that pratishthá of the goddess Durga may be performed even in dakshináyana, or when

<sup>&</sup>lt;sup>1</sup> Raghunandana, p. 608.

<sup>&</sup>lt;sup>2</sup> See also Jyotistattvam of Raghunandana, p. 290.

P, HLE

General rule as to time how far applicable to temples.

the sun is in the southern equinox. To explain this apparent contradiction between rules laid down for the building of dwelling-houses and those for the building of temples, Raghunandana remarks that the direction given in Krittya Chintamani 1—that the same rules are to be observed in installation of dwelling-houses and templesrelates to the auspicious moon, &c., and not to the particular months in which the ceremonies are to be performed. (For particulars of auspicious astrological conditions, see Raghunandana's Jyotistattvam, p. 290, and Vástu Yágatattvam, p. 608.)

III. Selection of site.

The selection of a site for a temple depends primarily upon rules common to all houses. The technical term for the site of a dwelling is vastu, the word also denoting the dwelling itself when completed. Vástuvidyá or architecture is the most important branch of the Silpa Shástra of the Hindus, and elaborate rules are laid down therein for the selection of a proper site for a house. The following summary, by Ramraz, of the rules laid down in the Mánasára, the most celebrated treatise on the Silpa Shástra which has come down to us. is the best example which can be offered of these rules:—

Ramraz's summary of

Rules in Mana-RATA.

"The third chapter of the Mánasára professes to treat of the nature and qualities of the ground on which buildings are to be erected. It opens with the definition of a vástu, a term used to express the ground on which any superstructure is raised, as signifying that which is inhabitable, and directs a careful examination of the site to be selected for building, as to its fitness for the purpose from its colour, smell, taste, form and touch. It then goes on to divide the soil into four sorts, and to point out in the order of superiority what is considered auspicious for class of owner. the residence of each of the four classes, with reference

Classification according to

to the five qualities above-mentioned. Nay, some have even gone so far as to forbid the lower classes from occupying the ground suited to the higher, and vice versa, on pain of incurring the severest vengeance of heaven; but the principle on which these distinctions are founded is altogether nugatory. It signifies little whether the ground designed for the residence of a Brahman be square or oblong, white or red, sweet or sour, provided that the situation is convenient, and that it furnishes a firm bottom for laying the foundation; nor is it possible to find a place possessing all the qualities required by this prescription for the residence of any one of the classes; and in order perhaps to obviate this difficulty, another more general A general clasclassification of the soil into three sorts is added, with the declaration that the two first will answer the purposes of all classes of men without exception.

"The best sort of ground should abound with milky trees 1. Good. full of fruits and flowers; its boundary should be of a quadrangular form, level and smooth, with a sloping declivity towards the east, producing a hard sound, with a stream running from left to right, of an agreeable odour, fertile, of an uniform color, containing a great quantity of soil, producing water when dug to the height of a man's arm raised above his head, and situated in a climate of moderate temperature. The ground possessed of qualities directly opposite to those mentioned above is the worst, and that which has a mixed nature is the middling." 1 2. Mediu

The ground to be avoided is described in a special manner 3. Bad. as follows:—"That which has the form of a circle, a semi-circle, containing three, five, or six angles, resembling a trident or a window, shaped like the hinder part of a fish, or the back of an elephant, or a turtle, or the face

<sup>&</sup>lt;sup>2</sup> Ramraz's Essay on the Architecture of the Hindus. London, 1839, pp. 15—17.

of a cow, and the like, situated opposite to any of the intermediate quarters—north-west, and the like—abounding with human sculls, stones, worms, ant-hills, bones, slimy earth, decayed woods, coals, dilapidated wells, subterraneous pits, fragments of tiles, limestones, ashes, husks of corn, and exposed to the wafted effluvia of curds. oil, honey, dead bodies, fishes, &c.; such a spot should Other authori- be avoided on every account." Similar provisions will be found in the Matsya Purana 1 the Devi Purana, the

Hayasirsha Pancharátra and in the Brihat Samhita. 3 The roots of these regulations can be traced back to the Grihya Sutras of Gobhila and Ashwalayana.

Rules as to colour,

8. Taking the qualifications in the order enumerated above we find, as to colour, white approved for Brahmins 3 and red for Kshattriyas.4 As regards the Vaisyas there is a conflict of authority. According to Gobbila 5 the black coloured soil belongs to the Vaisya, but Ashwaláyana<sup>6</sup> predicates the yellow colour to that caste. Both sages agree in omitting all mention of the Sudra caste, but later writers7 have filled up the gap by allotting the yellow

### <sup>३</sup> गौरपाष्ट्रग्र बाह्मबस्य ।

"The site of which the dust is white, for the Brahmin." Gobhila Grihya Sutra, 4, 7, 5. Bib. Ind., p. 707 cf. Ashwalayana Grihya Sutra, 2, 8, 5-6. Bib. Ind., p. 146.

4 जोश्तिपार्श्रप्त समियस्य।

### <sup>6</sup> पीतं वैश्वनस्य।

"Yellow, of the Vaisya." Ashwalayana Grihya Sutra, 2, 8, 8. Bib. Ind., p. 146.

<sup>7</sup> श्वेता रक्ता तथा पीता हव्य

विप्रादेः म्हावे भूमिरतः कार्यः परी-

quoted in Matsya Purana, श्री इरिभक्तिविखास, p. 696.

श्वेताददा पीतक्रव्या विप्रादीनां प्रम-

Haya Sirsha Pancharátra quoted in শ্লীম্ববিদ্যাম, p. 697.

<sup>1</sup> Quoted in श्रींचरिभक्तिविखास, рр. 69д-697.

By Varaha Mihira, Adhyaya,

<sup>&</sup>quot;The red-dust (site) for the Kshattriya." Gobhila Grihya Sutra 4, 7, 6. Bib. Ind., p. 707 cf. Ashwalayana Grihya Sutra, 2, 8, 7. Bib. Ind., p. 146.

<sup>&</sup>lt;sup>5</sup> सम्बापाण्या वैभासा।

<sup>&</sup>quot;The black-dust (site) for the Vaisya." Gobhila Grihya Sutra, 4, 7, 7. Bib. Ind., p. 708.

colour to the Vaisya and the black colour to the Sudra, as most harmonising with the position of the fourth caste in the Hindu system. The test of smell for soils I do not Smell, find mentioned in the Grihya Sutras, but certain odours are declared by the Hayasirsha Pancharátra to render the soil propitious for all the castes generally. As regards the odours appropriate to particular castes, the same treatise mentions those of clarified butter, blood, food and spirituous liquor, for the four castes respectively, which coincides with the directions given by Varáha Mihira.

9. As regards the quality of taste, the Grihya Sutra Taste, of Gobhila is silent. Ashwaláyanu,<sup>8</sup> in the text as now extant and as understood by the commentators, predicates the sweet taste (Madhurásváda) to be propitious to the three twice-born classes. In later times, however, a taste was allotted to each of the four castes, in the descending scale, according to their respective status. Thus the Matsya

सितरक्रपौतक्रव्या विप्रादीनां प्रमस्यते Adhyaya 53, Brihat Samhita. al. 96. Bib. Ind., p. 274. <sup>1</sup> स्यमीर्षे । Quoted काक्षीरचन्दनामोदा कर्पराम्बमन्धि-मी। कातिचम्ब-मन्यिनी ॥ मागकेश्रर-पारका-सविका-ग्रन्था मन्मिनी। दक्षिचौराचा-ग्रभा मदिरासव-गन्धिनी ॥ त्त्रतम् त्रीहितमा च р. 296. सम्बं विका भूमिः सर्वेसाधारकी सता ॥

\* \* \* \* विपादीनां प्रमञ्जते। चाच्याद्वगञ्जनदानां तुःखनमातुया भवेत्॥

Quoted in श्रीहरिभक्तिविद्यास, pp. 696, 697.

वित्रादीमां प्रमस्यते भूमिः। गम्भय भवति यस्या ष्टतद्विराज्ञासमस्यसमः॥

"A smell like ghee, blood, food and spirituous liquor, denotes ground suited to Brahmins and the rest in succession." Brihat Samhita, Adhy. 53, 96. Rib. Ind., p. 274. J. R. A. S., N. S., Vol. VI, p. 296.

\* Grihya Sutra, 2, 5, 6, 7, 8. Bib. Ind., p. 146.

Form,

Purána, Hayasirsha Pancharátra and Brihat Samhitá coincide in allotting the sweet, astringent, sour and bitter soils to the Brahmin, Kshattriya, Vaisya and Sudra respectively. As to form or shape, Gobhila recommends an oblong or circular shape for the residential site without any distinction of caste. A long list is given in the Hayasirsha Pancharátra of the shapes to be avoided, which closely corresponds with the list given in the Mánasára. It is to be observed that the circular shape recommended by Gobhila is directed to be avoided by the later authorities.

Touch,

I have been unable to trace any further authorities dealing with the qualifications of soils as felt by the touch, except the incidental mention of smoothness in the *Brihat Samhita* <sup>5</sup> as a desirable quality in this connection.

1 सात्से। \* \* \* विप्रावां मधुरा-खादा कवाया चित्रयस च। कवाय-कडुता तद्देश्व-ग्रहेष मस्ते॥ दवनीर्वे। \* \* विप्रादीनां प्रम-खाते। \* \* \* \*

सधुरा च कवाया च चला च कटुका

Quoted in श्री**चरिभक्किविचास,** pp. 696, 697.

# <sup>2</sup> चनुवर्णं वृद्धिकरी

### मधुरकषायास्त्रकृता च ॥

"Likewise, soils sweet, astringent, sour and bitter promote the weal of the four castes respectively."

Brihat Samhita, Adhy. 53, sl. 97. Bib. Ind., p. 274. Cf. translation in J. R. A. S., N. S., Vol., VI, p. 296.

<sup>3</sup> शादा-सन्धातम् ॥ ४॥ **० ॥** १२ ॥

स्चल-द्वीप-पश्चितं वा ॥ १६ ॥ Grihya Sutra, Bib. Ind., pp. 709-710.

- <sup>4</sup> Quoted in সীহু**ং**সিল্লিবিস্তার, p. 697.
- <sup>5</sup> मखीषधिडुमस्ता मधुरा सुगन्धा विग्धा समा न सुविरा च मदी नरा-याम

षणध्यनि त्रमविनीद्सुपागतानां धने त्रियं किसृत शास्त्रतमन्दिरेषु॥ ५३॥ व्यः॥

"88. A level ground, sweet, of good odour, decked with good herbs, trees and plants, smooth and not full of cavities, bestows happiness on those even who come to rest themselves on it from the fatigue of travel; how much more then on those who have a permanent home on it?" Brihat Samkita, 53, 88. J. R. A. S., N. S., Vol. VI., p. 294.

A passage in the Hayasirsha Pancharátra¹ directs the And sound, avoiding of soil which is duh-svana which may be interpreted to mean either "producing sound with difficulty" or "producing evil sound." Ramraz, it will be observed, mentions another classification of soils into three de-Other qualities. scriptions according to the possession of certain physical characteristics, and I have, in the notes to the same passage, shewn how far similar provisions can be found in the sacred literature of the Hindus. (See §§ 12 & 13, infra.)

10. Another test for the fitness of soils mentioned in Test by light-ancient treatises, though not included by Ramraz in his ing a lamp in summary, is thus described in the Matsya Purána<sup>3</sup>:—

"A hole measuring one cubit (in depth) having been well plastered with mud, a saucer of unbaked earth is to be filled with ghee and four wicks lighted therein, for testing the quality of the soil. If the wicks burn brightly in the four directions of east, &c., the ground is fit for the four castes,—Brahmin and the rest respectively. If the brightness is on all four sides then the ground is fit for all."

The same rule is laid down by Garga<sup>3</sup> and Varáha Mihira. The same two writers describe another test consisting of placing in a pit for one night the flower appro- Or by putting priate to the particular caste. If it remains fresh in the morning the ground is fit for that caste, otherwise not. 6

11. Many of the provisions previously mentioned may The rationale of seemingly at first sight appear useless and unmeaning, and they are useless tests.

<sup>&</sup>lt;sup>1</sup> Quoted in श्री**श्रिक्शिशास**, p. 697.

<sup>&</sup>lt;sup>2</sup> Quoted in श्रीइरिभक्तिविज्ञास, p. 696, also in वासुवागतस्वं Raghunandana, p. 607.

<sup>&</sup>lt;sup>3</sup> चामे वा खण्मये पाने दीपवर्त्ति-

यस्मां दिशि प्रव्यक्ति चिरं तस्मैव सा

Quoted by Kern in J. R. A. S., N. S., Vol. VI, p. 295.

<sup>Brihat Samhita, Adhy. 53, sl.
94. Bib. Ind., pp. 273, 274, J. R.
A.S., N. S., Vol. VI, p. 295.</sup> 

<sup>&</sup>lt;sup>5</sup> Garga, quoted by Kern in J. R. A. S., N. S., Vol. VI, p. 295. Brihat Sanhita, Adhy. 53, sl. 95.

viewed in that light by Ramraz. It is difficult, however, to decide absolutely upon rules of practice embodying the experience of many ages, as the progress of Western science has revealed the truth of many things which had been previously set down to the credit or discredit of oriental prejudice or imagination. It may be that some sound principle underlies particular rules which at first sight appear to be due to mere superstition. Thus it is conceivable that the fading of a flower would denote the heat-retaining capacity of the soil. So the burning bright of the lamp might be an index to the purity of the soil from bad exhalations and their presence indicated by its burning dim, as in the familiar instance of lights let down into old wells, &c.

Three classes of soil found by test of fertility.

12. The test of fertility is mentioned in the Grihya Sutras of Gobhila and Ashwalayana. A soil which is not (anushara) barren is recommended. In the pastoral as well as the agricultural state, the fertility of the soil would no doubt be an attraction and advantage to the new settler. I believe these regulations to date from the pastoral times, recommending as they do the presence of water, shade of large forest trees and the existence of particular species of herbs and grasses.8 In the agricultural state the test was subsequently modified to suit the later requirements, as may be seen from the passage in the Matsya Purana,8 which directs seed of all kinds to be sown on tilled ground; if they germinate in three, five or seven nights, the soil is classed as habitable in descending degrees; but if the seeds take more than seven nights to germinate

<sup>&</sup>lt;sup>1</sup> Gobhila Grih**ya Sutra, IV, 7-8.** Bib. Ind., p. 708.

Ashwalayana, II, 7, 2.

Bib. Ind., p. 142.

\*\*Gobhila Grihya Sutra, IV, 7, 2, 3, 4, 8, 9, 10, 11.

Ashwalayana Grihya Sutra, II, 7, 3, 4, 5, 6.

<sup>•</sup> Quoted in श्रीदरभक्तिविद्याप,

р. 696.

then the soil is classed as bad, and ought to be avoided for dwelling purposes.

13. Rules are also laid down evidently intended to test Similar classification by test the solidity of the soil and its consequent fitness for the of solidity. construction of buildings. Thus Ashwaláyana 1 directs a hole knee-deep to be dug and re-filled with the same earth. If there is an excess of earth, the site is good; if the hole is just filled, the site is indifferent; but if there is a deficiency, the site is bad. At sunset the hole is to be filled with water. If in the morning there is water therein, the soil is good; if the water be gone but the soil be moist, the soil is pronounced indifferent; but if the hole be dry, the soil is condemned. Ramraz in his treatise gives the first of these rules on the authority of Casyapa:—

"Having dug a pit—a hasta in depth—in the middle of the ground, return the earth into it, and according to the space which the latter may now take up with reference to that which it occupied before the digging of the pit, whether more, less, or the same, the ground should be considered as good, bad or indifferent; the good and indifferent sorts are acceptable, but the bad should by all means be avoided." §

The Matsya Purana and Hayasirsha Pancharátra also give the first rule without apparently taking notice of the second.

Varáha Mihira, however, has given both rules, the first almost in the same words,—the second with a slight variation which does not touch its principle.

"A hole measuring one cubit having been dug in the midst of the house-site and again entirely filled up, if

<sup>&</sup>lt;sup>1</sup> Grihya Sutra, II, 8, 2, 3, 4, 5. Bib. Ind., pp. 145-146.

<sup>&</sup>lt;sup>2</sup> Ashwalayana Grihya Sutra, II, 8, 4, 5.

Bib. Ind., p. 146.

<sup>\*</sup> Ramraz, Essay, p. 17.

<sup>\*</sup> Quoted in **司要(补稿)(報句)**, pp. 696-697.

there is a deficiency it is bad, if equality indifferent, but excess is good." 1

- "Or fill the pit with water. If, having walked a hundred paces, you find on returning the water not diminished, it is a lucky token; which it is also when an adhaka of earth dug out weighs sixty-four palas." 3
- Ramraz, as we have seen, animadverts strongly on the apparently artificial and capricious distinctions of "colour, smell, taste, form and touch" in the soil to be selected for a building site, and he imagines that the more general classification of the soil into three classes had been adopted to obviate the difficulty created by the former more elaborate classification. Now it is one of the most redeeming features of the sacred literature of the Hindus that it contains within itself sufficient to satisfy the needs of every class of followers—whether their thoughts move in the lowest plane of superstition or the highest plane of Varáha Mihira in the midst of the enurationalism. meration of various tests by omens and auguries as to the auspiciousness of particular sites, delivers himself in the following strain which the most enlightened of moderns could not demur to :-

And that (site) too is auspicious (to the builder) whose heart delights therein." 8

Effect of progress:

A universal maxim of

selection.

15. In the most primitive times the worship of fire would be carried on at the domestic hearth and the worshipper would offer his own food to the gods before

1 स्ट्सिक्षे दखिनतं, चाला परिपूरितं पुनः सञ्जम् । चयूननिष्टं तत् समे सनं धन्यनिधनं यत् ॥ Brihat Samhita, Adhy. 53, sl. 92.

े सभमचवाम्मपूर्व पदश्रतमिलागतस्य यदि नोनस् । यबन्धं यब भतेत् पंजान्यपासाङ्कं चतुःषष्टिः ॥ Brihat Samhita, Adhy. 53, al. 93. <sup>8</sup> तत्तस्त्र भवति द्वाभदं यस्त्र च यस्त्रिकानो रसते । Bib. Ind., p. 274. Brihat Samhita, Adhy. 53, sl. 95; J. R. A. S.,

N. S., Vol. VI, p. 295.

he partook of the same himself. Under such circumstances the single hut raised for residence would also cover the hearth and the altar. With further progress, the cooking Social would be relegated to a separate shed on grounds of convenience and safety. Thus Ashwalayana 1 directs the house-holder to construct his cook-house to the north and his assembly-house to the south of the sleeping-house.

In later times, when image worship became prevalent, and religious. special rules and directions were laid down for the location of temples as also for the location of houses with reference to the former. I shall first deal with the latter class of rules, as they are fewer in number. In the sense that temples are god-houses, these rules may also govern the site of a temple proposed to be built.

It is prohibited for the door of a house to face a temple or image of a god<sup>2</sup> on pain of destruction; and the vicinity of a temple <sup>3</sup> as a dwelling-site is condemned on the ground that it is calculated to cause anxiety of mind.

16. Coming now to special rules as to the site of Village bound-temples, we find a direction in Menu to erect temples on aries as proper the common boundaries of villages. The primary object temples of this rule, however, is the secular one of preserving good evidence of the boundary as appears from the context and from the commentaries.

The Hayasirsha Pancharátra <sup>5</sup> recommends that a temple should not be built so as to encroach upon the boundaries

<sup>&</sup>lt;sup>1</sup> Grihya Sutra, II, 7, 7, 9.; Bib. Ind., p. 144.

<sup>&</sup>lt;sup>2</sup> विनामी देवता-विदे | Matsya Purana, quoted in Sabdakalpadruma, loc. ' Vástu,' p. 4259.

भवति विनाशस्य देवता-विदे । Brihat Samhita, Adhy. 53, sl. 78; Bib. Ind., p. 271. J. R. A. S. N. S.,

Vol. VI, 292. <sup>3</sup> जदेगो देवकुदी। Brihat Sam-

hita, Adhy. 53, sl. 89; Bib. Ind., p. 273. J. R. A. S., N.S., Vol. VI, p. 294.

न देवधूर्तपचिवचलराणां पनीपतः। कारयेक्कवनं प्राच्चो दुःचागोकभयं यतः॥ Matsya Purana, quoted in Sabdakalpadruma, p. 4260, loc. ' Vástu.' \* VIII, 248.

<sup>&</sup>lt;sup>5</sup> Quoted in the श्रीहरिसित्त विश्वास, p. 696.

of another pre-existing temple or building, and that the new erection should be placed at a distance of double the height of the prior structures. This rule is an amplification of the one already noticed on the authority of the Matsya Purána<sup>1</sup> and the Brihat Samhita which condemns the vicinity of a temple as unfit for a dwelling-site.

Fitness of the soil how ascertained. According to the *Devi Purána*, the temples of the superior gods—Vishnu, Rudra, Brahmá and others—should be established in auspicious places, as ascertained by smell, taste, colour, holes, &c.; otherwise fearful consequences ensue. This, in the absence of any special directions for temples, must be referred back to the tests already detailed about dwellings in general. The point is expressly ruled by Varáha Mihira :—"The several sorts of soil, which have been previously mentioned, when treating of house-building, as suited to Brahmans and the rest, are likewise recommended to them in the construction of temples for gods."

Surroundings acceptable to gods. 17. The same author gives the following description of the fit surroundings of temples which are thus described in poetic language by Varaha Mihira 4:—

"The gods use to haunt those spots which by nature or artifice are furnished with water and pleasure-gardens.

"Lakes where groups of lotuses like umbrellas ward off the sun's darting beams, and the waters receive access of brightness by the rows of white water lilies pushed aside by the shoulders of swans; where swans, ducks, curlews and paddybirds utter their resounding notes, and fishes repose in the shade of Niculas on the brinks; places where rivers flow, having curlews for their tinkling zone, singing swans for their melodious voice, the water-

<sup>&</sup>lt;sup>1</sup> Ante, p. 59, notes 2 and 3.

<sup>&</sup>lt;sup>2</sup> Quoted in श्री**दरिभक्तिविद्यास,** p. 696.

Brihat Samhita, Adhy. 56,

sl. 9. Bib. Ind., p. 307. J. R. A. S.,

N. S., Vol. VI, p. 318.

4 Brihat Samhita, Adhy. 56, sl.

<sup>38.</sup> Bib. Ind., p. 307.

sheet for their cover, and carps for their belt; regions where streams have blooming trees on the margin, comparable to ear ornaments, confluences not unlike to, buttocks, sandy banks like to high swelling bosoms and merry laughter from the swans; tracts of land in the neighbourhood of woods, rivers, rocks and cataracts; towns with pleasure-gardens; it is such grounds the gods at all times take delight in." (J. R. A. S., Vol. VI., p. 317.)

In the ninth chapter of the Manasara Vastu, in Location of the course of the description of the eight classes of villages particular or towns, detailed instructions are given as to the location of shrines or temples for Vishnu, Shiva, Chámundá, Mahá Káli, Brahmá and other deities, and the following general directions are given in the same work :-

"The temples of Vishnu, in whatever form that deity may be worshipped, should be erected within the village facing towards the east, except in the incarnation of Nara-Simha (the Man-Lion), whose temple should be built without the wall with its face turned from the If the emblem of In the case of

Shiva (Linga) is to be consecrated according to the Siddhanta Agama, it may be placed within the village; if otherwise, it should remain without. Vishnu, too, if the idol is to be consecrated according to the system of Vayghánasa, it may be admitted within; but if according to the doctrines of Pancharátra it should be placed without the village. The shrines of Durgá, Shanmucha and the objects worshipped by Jainas and Bauddhas, should be erected without the village." 2

village or town.

रैशाने देवताजारं। Matsya Purana, quoted in the Sabdakalpadruma, p. 4261, loc. atter

<sup>&</sup>lt;sup>1</sup> Ramraz, Essay, pp. 42, 43,

Ramraz, Essay, pp. 45-46. रेशन्यां देवशासा स्थात्। quoted in च्योतिस्तर्स, p. 290.

Site of domestic chapels. 19. As to domestic chapels, their location is directed in the north-east corner of the dwelling; and in a later passage s the same author prohibits the house-holder, desirous of property, from sleeping above deities. This is an easily comprehended rule of decorum applicable to all classes of divine dwellings. It is in consequence of this rule that the room for the residence of the deity (thákurghar) is so constructed that no room be situated above it. The same holds true of the thakur dalan or chandi mandap, the hall of worship which is similarly constructed. From the necessity of periodically installing and removing heavy and large images, the latter is necessarily built on the ground-floor.

IV. Purificacation of soil by (a) ploughing.

Its object and development into ceremony of bhumipari-graha.

After the selection of the vastu or site for dwel-20. ling, it was an ancient practice to plough the land. The practice could not exist in the pastoral age, and it is noteworthy we find no mention thereof in the Grihya Sutra of Gobhila. Ashwalayana,8 however, directs the thousandfurrowed ploughing of the site. The primary object in ploughing is to clear and level the land. In later times, however, the process came to be enveloped in an elaborate ritual, and the whole ceremony is now styled Bhumi-parigraha or taking possession of the land. Varáha Mihira alludes to the most salient features of the latter-day ritual, namely the ploughing, the sowing of seeds, the grazing of the resulting crop by cows and the assembly of Brahmins. Fuller details are given in the Hayasirsha Pancharátra<sup>5</sup> as follows. On an auspicious day, the priest offers on the

<sup>&</sup>lt;sup>1</sup> ऐशान्य देवार्ट्स Brihat Samhita; Adhy. 53, sl. 118; Bib. Ind., p. 278. J. R. A. S., N. S., Vol. VI, p. 299.

Brihat Samhita; Adhy. 53,
 sl. 124; Bib. Ind., p. 279. J. R.
 A. S., N. S., Vol. VI, p. 300.

<sup>&</sup>lt;sup>8</sup> Grihya Sutra, II, 8, 9; Bib. Ind., p. 147.

<sup>&</sup>lt;sup>4</sup> Brihat Samhita; Adhy. 53, sl. 98; Bib. Ind., p. 274 J. R. A. S., N. S., Vol. VI, p. 296.

<sup>&</sup>lt;sup>5</sup> Quoted in श्रीहरि**भक्तिविखास**, pp. 697-8.

outer boundary of the selected land an oblation to the evil Stakes are then driven into the ground and an invocation addressed to the evil spirits to depart from the place as it was about to be appropriated to the use of Hari. The purification of the ground is then commenced by performing several homas or fire-oblations, after which a pair of brown oxen are yoked to a plough made of Asan wood, and auspicious seed sown after ploughing. the seeds have grown, the field is to be grazed over by (b) Sowing of cows on an auspicious day, again ploughed and levelled, seed and crop to be grazed when the house may be begun to be built.

over by cows.

The Mánasára Vástu<sup>1</sup> gives some further details Details as to upon the same subject:—

"A plough must be made of the Khadira, nimba, or of the wood of any other milky tree. It must be from one to one and-a-half hasta in length, with a tapering point resembling the leaf of a bamboo, furnished with a share of three, five, or six angulas long and two thick, and with a beam of three yards in length. This machine is to be yoked to a pair of oxen of equal size and of the same colour, either white, black, red, or gray. should be strong and such as have not exceeded the middle age. Oxen with horns bent down, maimed, weak, meagre, toothless, or lame should be rejected; those with a white spot on their legs and foreheads, with eyes resembling the petals of the lotus, are to be preferred. should be decorated with fillets and the like and their horns and hoofs with gold or silver rings. The Sthapati, clad in fresh garments, and adorned with garlands of flowers, waits the auspicious moment to present his offerings to the deity, and then guiding the oxen draws the first furrow. After this, Sudras hired for the purpose complete the ploughing of the whole ground.

<sup>&</sup>lt;sup>1</sup> Ramraz's Essay, pp. 17-18.

Motive for

Kásyapa 1 enters into a minuter description of the letting the crop ploughing machinery, which it is not necessary to reproduce; but the following passage from the same author is of interest, as explaining the religious motive for allowing the crops to be grazed over by cows 3:-

"Having yoked the oxen a little more to the right than to the left of the pole or towards the right hand of the driver, and having recited the appropriate prayers, let furrows be drawn towards the east or west, the grass being plucked out in the first instance. Let sesamum seeds, pulse, and kidney beans be sown, with incantations pronounced over them, and let due reverence be paid to the spiritual teacher, and the oxen and the plough, to which they are attached, presented to him. When the crops are matured and the flowers in bloom, let them be grazed on by cattle, and let cows remain on them for one or two nights. The ground will become purified by the froth flowing from the mouths of the cows and by their ordure, after which you may commence building in the centre thereof."

(c) Ascertaining cardinal points.

23. The next important step is to ascertain the cardinal points which is indispensably necessary in the construction of a Hindu building for the purpose of giving it. the auspicious aspect and avoiding its facing any of the intermediate points which are considered inauspicious. cardinal points of the compass are ascertained by a very simple method from the shadow of a gnomon, which is thus described in the Mánasára Vástu 8:-

"On a smooth level piece of ground is erected a gnomon," which, "according to some, should be of sixteen angulas in height, and of the same diameter at the bottom; the whole should be shaped like the leaf of an opening

<sup>&</sup>lt;sup>1</sup> Ramraz's Essay, p. 18. 2 Ramraz's Essay, p. 19. Ramraz's Essay, pp. 19,20.

bud, tapering gradually from the bottom to the top." Around this a circle is drawn with a cord of twice the height of the gnomon, by fixing one end of it to its base and carrying the other around it. Points are marked in the circumference where the shadow of the gnomon projects, both in the forenoon and afternoon, that is at any given hour after sunrise, and at the same time before sunset; and between these points a right line is drawn so as to join them; the point marked by the morning shadow will show the east and that marked by the evening shadow the west. Then, from each of these two points, and with a radius equal to the distance between them, describe two more circles cutting each other, and resembling (in their points of intersection) the head and tail of a fish, between which draw a right line, which will point to the south and north. Again, from the southern and northern points, which touch the circumference of the inner circle respectively, and with the same radius, describe two more circles, and the points of intersection on the two other ides, will indicate the east and west." The intermediate points are ascertained by similar processes, and the textbooks also contain various directions for the purpose of certifying the variation in the shadow caused by the irregularity of the sun's motion in the ecliptic. 1

According to  $\mathbf{the}$ Hayasirsha Pancharátra. when the directions have been all marked out on the spot with thread-marks, the spot should be further sanctified (d) Feasting by feasting Brahmins thereupon. Although the operations hereinbefore recited may be supposed to have cleansed the ground from its superficial impurities, the (e) Eradicating Hindu writers discuss the existence underground of im-impurities or pure and inauspicious foreign substances technically called

salyas or thorns, and the means of eradicating the same. It is observed in the Matsya Purana that when the builder of a house has extensive itching over his body at the commencement of the construction, it indicates the existence of thorns underground which ought to be removed, for the thornful (ground) is the cause and the thornless (ground) the remover of fear. There is a rather enigmatical passage in the Hayasirsha Pancharátra, which reads thus:—"(The architect) should indicate the thorns of the building from the altered state of particular limbs of the owner. When omens are seen, or sounds are heard, or the name is proclaimed, the thorns are to be referred to the same." The obscurities of the above are cleared by comparing it with the following passage in the Brihat Samhita of Varáha Mihira 3:—

Omens reveal-

"When the edifice is half-built or finished, let the architect enter it and observe the omens,—on what spot the house-owner happens to stand, and what limb he is touching.

"Should, on that moment, an ominous bird, being scorched by the sun (i.e., facing the quarter in which the sun is standing at that period), emit hoarse sounds, you may predict that on the spot (where the house-owner is stationed) there is a bone of a member corresponding to the member touched.

"And by other animals, like elephants, horses, dogs, shricking in return at the time of augury, may be known that the specified spot contains a bone from such an animal and belonging to a corresponding limb of the body.

"The sound of an ass when the measuring line is being extended announces that there is a bone hidden. You

<sup>&</sup>lt;sup>2</sup> Quoted in সীহ্**মিনিবিভাগ,**p. 698.

<sup>8</sup> Adhyaya, 53, sl. 105—108.

may predict that there will be another 'wounding point,' (as it is termed,) on seeing a dog or jackal leaping over the measuring line."

The ceremonies which follow the cleansing and V. The Vastu. yága cerepurification of the ground are collectively styled the monies. Vástuyága. We have already seen that the word vastu means the site for a dwelling and also the dwelling itself. Vástospati is one of the names assigned to Indra in the Vedas and current for that purpose even in the day of the lexicographer Amara. One of the later conceptions, The Vedic however, of the Vedic religion was that of a separate Vastospati. Vástospati or house-protector regarded as presiding over the foundation of a house to whom hymns are addressed in that connection.1

In the Gobbila Gribya Sutra 2 there are directions Directions of for establishing the sacrificial fire in the middle of the site, Vastuyaga. and the performance of sacrificial rites with a black cow or white goat, and the hymn in honour of Vástospati is expressly directed to be used in offering the first oblation. The commentators understand this rite to be performed after the construction of the house had been completed, but I am inclined to think that the more reasonable interpretation is to make it performable before.

Ashwalayana, 8 whilst being silent on the above other direcpoints, gives other directions in which we can trace further layana. developments of the ceremony. According to him, when the land has been well ploughed, a square or oblong portion should be measured out and prepared for the sacrifice. This is afterwards to be sprinkled with water from branches of the sami or udumbara tree, the priest walking round thrice, reciting the Santatiya hymns of the Rig

<sup>&</sup>lt;sup>1</sup> Rig Veda, VII, pp. 54-55. Muir's Sanskrit Texts, Vol. V, p. 273 note.

<sup>9</sup> Gobhila Grihya Sutra, IV, 7, 27-41; Bib. Ind., pp. 716-723. \* Grihya Sutra, II, 8.—Bib. Ind., p. 147, et seq.

He is also to go round thrice with a water-pot pouring a continuous jet of water, and reciting the hymns of the Rig Veda, Apo hishtthá, &c. In the holes dug for the posts aquatic plants are to be placed, whereby the householder is promised protection from fire. plants being incombustible may serve as emblems for this desire for protection from fire; but seeing how difficult it is to account for such a result, it might be worth enquiring whether these plants have preservative action in protecting the timber underground against the operations of natural influences or the attacks of insects. At the hole for the central post, the additional ceremony is performed of putting in blades of kusa grass and sprinkling it with water mixed with sacrificial grains. When the central post is placed in its hole an invocation is addressed to it, expressing a desire for the prosperity of the householder. After this a water-pot is to be placed on four stones covered with durvá grass, reciting particular texts and water poured therein to the accompaniment of a hymn invoking the presence of the water-god, Varuna. the place is again sanctified by the priest walking thrice round reciting the Santatiya hymns and sprinkling water in which sacrificial grains and gold had been steeped, and also perambulating the premises with a water-pot giving a continuous jet of water. Finally the householder is directed to cause a cooked offering of rice to be prepared in the interior of the house, to offer the same with the recitation of the previously-mentioned texts to Vástospati to offer the remainder of the cooked rice as a feast to the Brahmins and cause them to pronounce a blessing on the house.

Blessing by Brahmins.

Ceremonies prior or subsequent to construction. 28. Whilst some portion of the ceremonies above enumerated are clearly intended to be performed before the

<sup>&</sup>lt;sup>1</sup> Ante, p. 67.

erection of the house, others by the context are shewn to be accompaniments of the erection or to follow its com-In modern practice the Vástuyága, the principal Modern pracof these ceremonies, is performed at the option of the Vastuvaga. householder either before the erection or afterwards at the time of the formal entry into the completed structure.

tice as regards

The Vedic conception of Vástospati was developed Origin and in later days into a belief in the existence of a Vástunara accounts of or Vástupurusha with his separate genealogy.

Vástupurusha.

Varáha Mihira!:—"There was, it is affirmed, some Being obstructing with his bulk both worlds, but on a sudden he was subdued by the host of gods and hurled down. several parts of his body, each is subjected to the particular deity by which it was attacked. It is this being of immortal substance that by the Creator was destined to be the dwelling-house personified (alias House-spirit)."2

Matsya Purana 8: - "Sinhiká, the wife of Kasyapa, gave birth to two sons, Ráhu and Vástu. The elder had his neck severed by Hari; the younger was cast down by the gods."

A fuller but partially different account is given in another part of the same work,4 to the effect that when Siva destroyed the demon Andhaka, the drops of perspiration which fell from Shiva's forehead on the ground gave birth to an immense and terrific being who greedily devoured all the blood of the demons killed in battle. Still insatiate, he practised austerities and obtained from the same deity as a boon the power to devour all the universe. Then the gods and the ante-gods all combined to bind him down, and each one entered into that part of that being's body which he attacked. Hence, being the Vástu

<sup>1</sup> Brihat Samhita, Adhyaya 53, sl. 23, Bib. Ind., p. 257.

<sup>&</sup>lt;sup>9</sup> J. R. A. S., N. S., Vol. VI, p.

<sup>8</sup> Quoted in the Vástuyágatatvam, Raghunandana, p. 608.

<sup>4</sup> Quoted in the Sabdakalpadurma, loc. बास्त, p. 4255.

(dwelling) of all the gods, he is called Vástu. thus overpowered he enquired how he should subsist, whereupon the gods allotted for him the valis offered within the Vástu or dwelling by the householder, as also the offerings made in the Vástupasamana yajna. satisfied him, and from that time the Vástu yajna has been ordained for the propitiation of the same.

The daily offerings to the  $V\acute{a}stu$  spirit are mentioned in the Ashwaláyana Grihya Sutra, 1 being a part of the Bhuta Bali, or the offering to all beings.

Modern Vástusacrifice to planets and ancestors.

The ceremony of Vástuyága, as performed in these yaga.
(a) Preliminary days, opens with the performance of the Grahayajna or sacrifice offered to the planets, which, according to the Matsya Purána,<sup>2</sup> is a necessary preliminary for the efficacy of all optional (Kámya) religious rites. preliminary rite consists in the performance of the Vriddhi Sraddha,3 otherwise called the Nándimukha,3 which has to be performed on every occasion of prosperity.

(b) Drawing the 31. The specific corolladia, with dividing the ground-plan of the house into 81 squares by drawing ten lines from east to west and ten others from north to south. The lines are drawn with a piece of gold and then marked out with the assistance of strings smeared with different coloured powders.6 In some cases the number of squares is sixty-four, when the lines are These squares are collectively called the nine and nine. Vástumandala. The large square is supposed to correspond to the body of the Vástunara and its component

¹ Grihya Sutra, III, 1, 3; I, 2,

<sup>4;</sup> Bib. Ind., pp. 155-158.

<sup>&</sup>lt;sup>9</sup> Quoted in the बास्तवागतन्त्रं, Raghunandana, p. 608.

<sup>&</sup>lt;sup>8</sup> Colebrooke's Essays, Vol. I, p. 187.

<sup>\*</sup> Matsya Purána, quoted in त्री**ररिभक्तिविद्यास**, pp. 699—701.

<sup>•</sup> Devi Purána, quoted ditto, p. 609.

<sup>6</sup> Brihat Samhita, Adhyaya 53, sl. 42 - 56; Bib. Ind., pp. 264 -267. J. R. A. S., N. S., Vol. VI, pp. 286-289.

before Sáligram in

squares taken to correspond to particular limbs and organs, and worship-ping its deities which again (in accordance with the myth already noticed) on the squares, are conceived to be the seats of particular divinities, who are worshipped therein.

- In the event of inability to prepare the Vástu- or mandala, the worship of the presiding deities is recom-default mended to be performed before the sacred Sáligram stone on the authority of the Padma Purána, which declares that the gods, Asuras and Yukshas, as well as the fourteen worlds are all present at the place where Vishnu is present in the form of that sacred stone.
- 33. The homa, which has to be performed next in this (c) Homa. connection, is the connecting link between the rituals of the Vedas and the Puránas.2 The Vishnu Dharmmottara directs the Vástospati mantras to be recited in the sacrifice for the house-god. In all stages of the ceremony, the oblation of milk, rice and sugar seems to be very much favoured.
- According to the Devi Purána, the worship of (d) The augury of floating the Vástumandala ought to be followed by the consecra-flowers. tion of a water-vessel in the middle of the Vástumandala sacred to Brahmá, and the water from the same has to be poured on the ground following the lines which make up the smaller squares. Finally a hole one cubit square and four fingers deep is to be dug in the middle, properly plastered with cow-dung and sandal paste. shipper then meditates on Brahmá, and pouring out the water from the sacred vessel into the excavation throws white flowers and watches their motion. If they float to the right: the omen is prosperous, and the contrary is

<sup>2</sup> Quoted वास्यागतत्त्वं Raghunandana, p. 609.

Matsya Purána, quoted in ditto, p. 611.

Quoted in ditto, p. 611.

<sup>4</sup> Quoted in ditto, pp. 609-10; also quoted in श्री दरिभक्तिविलास. pp. 706-708, as from the Matsya Purána. Cf. चोतिस्तत्त्वं, Raghunandana, p. 291.

Afterwards the hole is to be filled up with sacred

(e) Presents to the priest.

grains and with pure earth from the fields. On the conclusion of the ceremony the officiating priest is to be offered a present consisting of gold, a cow and a cloth. The worshipper then goes through the usual ablution, which is enjoined after the performance of every sacrifice,—feasts Brahmins and celebrates the rejoicings with

(f) Ablution.

(g) Feasting and rejoicing.

VI. Selection of material.

Special rules for selecting timber.

dance and song. In primitive times the first habitations of man were made of plants and trees, and the rules in the Grihya Sutras seem to be originally framed for structures of that description. Even in later times, when earth or stone came into use, wood and timber would continue to be employed. The Shastras 1 contain elaborate rules as to the description of timber which should be used in the construction of human habitations. These prohibitions proceed upon two lines. The one relates to the accident or surroundings of the tree, and may be explained on grounds of humanity and utility. Thus trees, on which birds have nested, or growing in temples, on boundary cairns, at the confluence of two rivers, in burning grounds, near wells, or by the side of tanks, are prohibited to those desirous of prosperity; and so are trees burnt by fire, blown down by wind, broken by elephants, struck by lightning, half-dry, as well as those which have broken down after becoming The second rule of prohibition depends upon the species of the tree, and might be the result of experience as to the usefulness or otherwise of particular trees in the construction of human habitations. Thus trees, exuding a milky juice, or abounding in thorns, are interdicted, as also the Kadamba, Nim, Baherha, Lasorha and Ela by On an auspicious day the consecrator proceeds to

<sup>&</sup>lt;sup>1</sup> Matsya Purána, quoted in the Sabdakalpadurma, p. 4261. Brihat Samhita, Adhyaya, 53, sl. 120; Bib. Ind., p. 278.

the forest to cut the timber. Having selected one of good quality, he offers oblations thereto for appeasing the spirits who might reside therein, and then the tree has to be so cut as to fall to the east or north. The presence of certain colours in the cut is declared to denote the presence of certain foreign substances within the wood, and to lead to its rejection.

The analogue of the ceremony of laying the found-VII. Silányáation-stone of a building exists among the Hindus, and the foundais known by the name of Silá-nyása or "stone-planting," tion-stone. the rudiments whereof may be traced, in the ritual of the Grihya Sutras, to the four stones on which a water-pot is When the dwelling consisted of a hut of wood, the strength of the same depended on the posts, and so the earlier ritual concerns itself with them. With the introduction of improved forms of architecture the stability of the dwelling came to be identified with the strength of the foundation, and so the latter became the subject of a religious ceremony.

The substance so to be deposited in the founda-Substance to tion must be the same as that which is to be employed in the construction of the building. The Matsya Purána 1 enumerates two, namely, stone and brick; and the Hayasirsha Pancharátra adds a third, kunkur. I shall treat of the subject as in the case of a stone-building, it being understood that—pari passu—the same form is observed for other structures.

In the Matsya Purána? it is directed that the tiles Its quality: should be square, smooth, and marked with various emblems of prosperity. The ceremony of Silá-nyása is aliuded to in a text of Devi Purána. 8 The ritual is pre-

<sup>&</sup>lt;sup>1</sup> Quoted in श्रीहरिभित्तिविखास, p. 709.

<sup>&</sup>lt;sup>9</sup> Quoted in the Kalpataru and सटप्रतिष्ठ।दितसं, Raghunandana,

Quoted in श्रीहरिभक्तिविद्यास, p. 708.

mony of lay-

And the cere-scribed in the Hayasirsha Pancharátra, 1 and includes an adhivása or preliminary purification of the tiles, their invocation representing particular spirits, with a view to the continued prosperity of the house, and their deposit in the foundations at the four corners of the proposed building.

VIII. Rules of architec-ture. General rules of, as to direction of, doors.

The Silpa Shástras and the Puranas contain numerous rules and directions for the construction of houses of various descriptions, but we are here concerned only with one of them, namely, the direction of the doors. earliest rule on the subject seems to be contained in the Gobhila Grihya Sutra,2 where a door facing east is recommended to the householder desirous of glory and strength; one facing north to him who is desirous of having sons and cattle, and one facing the south for the person desirous of having all his wishes gratified. same treatise, doors, facing west, or not facing the courtyard, or facing another's door, or allowing the householder to be exposed to the view of outsiders, are deprecated. As the possession of cattle and children is no need of the deities, we might expect that in treating of divine dwellings, preference would be given to doors facing east and This is actually the case in the Mánasára, as will be apparent from the following passage which is also useful as showing the special architectural rules laid down for the construction of temples:-

Special rules for building temples.

> "Temples consist of the garb'hagriha (the womb of the house), the anturála (the anti-temple), and the ard'hamantapa (the front portico). The diameter of the whole length of the building, including the walls, is to be divided into a four and-a-half or six parts; and the garb'hagriha to take up two, two and-a-half or three; the

Proportion of different parts.

<sup>&#</sup>x27; Quoted in श्रीइरिभक्तिविखास, pp. 709-710; also in the Commentary.

<sup>•</sup> IV, 7, 15—21.

<sup>\*</sup> Translated by Ramraz in his Essay, pp. 49-51.

anturála, one and-a-half or two; and the ard'ha-mantapa, one or one and-a-half. 1

"Temples on a large scale have three or four successive Plurality of porticos attached to them in the front, which are called ard'ha-mantapa, mahá-mantapa, Sthápana-mantapa, urittya-mantapa, &c. Ard'ha-mantapas are sometimes made broader than the garb'hagriha, in which case the width of the former is either one and-a-half or twice that of the In the event of the three compartments being of the same breadth, the length of the whole should be two and-a-half the breadth.

"The breadth of the garb'hagriha being divided into Thickness of three, four, five, seven, nine, eleven, thirteen, or fifteen parts, let two, three, four, five, six, seven, or eight be allowed to the interior space, and the remainder take up the thickness of the walls on all sides.

"The thickness of the wall being divided into twelve Dimension of equal parts, let five or six be given to the door-frames or posts without, and seven or eight to the inside of the door. The door-frames or posts my be placed either in the middle or at the extremity of the point of the division before-mentioned.

"The height of the pillars of the vimána is to be Height of divided into ten or eight equal parts; and nine, eight, or seven of them are given to that of the doorway, • the breadth of which is to be half its height.

"In temples and houses of Brahmins and others, two-Construction leafed doors may be used. The doors are turned either by means of a perpendicular cylinder, one end of which

generally a peristyle, and it serves as the innermost court around which people perform their circumambulations; I say the innermost court, because there are other courts around the whole temple."

<sup>? &</sup>quot;Sometimes a portico is made round the garb'hagriha and anturála together, the whole being closed by walls on all the sides but the front, in which are the doors for entrance, approached by the front portico, which is

rests on the ground, or by hinges. The outside of the door frames are ornamented with foliages, &c., and on the architrave of the door, and on both sides of it, are carved the images of the gods and goddesses presiding over gates and doorways.

The waterspout.

"Let a water-spout be made over the base on the back wall of the garb'hagriha, on the left side of the idol, either towards the east or the north, according as the temple may face towards the south or the east. The thickness of the spout should be either eight, ten, twelve, fourteen, or sixteen angulas. Its length should be equal to the ad'histhána, which length being divided into three equal parts, one is given to the projection below (lambaña). The breadth of the bottom of the spout is to be divided into five parts, and three to be given to the breadth of the sloping extremity below. The whole spout being divided into five parts, three to be given to the cugmala (an ornament made in the form of a bird), one to the padma (lotus or cima recta), and one to the vájina or On the surface of the spout a cavity is to be made for discharging the water, from one to five angulas broad. The breadth of the cavity at the end should be three-fifths of that at the bottom. The spout may be made to spring from the head of a lion, &c., and the whole so devised as to project like a plantain flower."

The common type of Bengal temples.

41. As pointed out, by Dr. Rajendralala Mitra, <sup>1</sup> in Bengal, the cubical body common to all orders of Indian temples, "is covered over by four curvilinear sloping roofs in exact imitation of thatch, and the point of junction at the centre surmounted by a miniature representation of the original construction. This structure has no distinct cornice, its place being supplied by the arched ends of the projecting roofs under which ornamentations are produced

<sup>&</sup>lt;sup>1</sup> Antiquities of Orissa, Vol. I, p. 30.

with great care to represent the ends of the framework." The copying in stone and brick of the earlier structures of more perishable materials is an established fact in the history of architecture in all parts of the world, and Dr. Mitra is right in his conception that the typical Bengali temple is only a reproduction in brick and mortar of the thatched original. I wish only to add to his description that what he thinks to be an ornamental reduplication of the temple is more probably the blind reproduction of the skylight thatch which is put up in the better class of thatched houses.

This, however, though the common, is not the only type other types. of temple prevalent in Bengal. Forms approaching nearer to the dicta of the Silpa Shástra are to be occasionally found, and in some cases a temple of the pure Bengali Nat mandir. type has affixed in front of it a mandapa or nát mandir, as may be seen in the temple of Kalighat near Calcutta.

**42.** The consecration or pratishthá of the temple, after IX. Concluits construction is completed, forms the subject of separate provisions, although some of them merge on the one hand in the Vástuyága and others in the ceremonies attending the consecration of the deity to whom the temple is to be For secular purposes, the consecration corresponds to the ceremony of griha pravesha or "house-Consecration entering." If the Vástuyága has been performed at the beginning of the house (gr:harambha), it is not obligatory to repeat it at the time of the house-entrance (griha Variha Mihira<sup>2</sup> tersely describes pravesha) ceremony. the latter thus: "Amid the shouts of Brahmins the proprietor has to make his entrance into his newly-built house, it being strewed with great many flowers, adorned

¹ वास्त्रयागतस्त्रं, Raghunandana, 53, sl. 125, Bib. Ind., p. 279; J. R. A. S., N. S., Vol. VI,

<sup>&</sup>lt;sup>9</sup> Brihat Samhita, Adhyaya, р. 300.

with archways, and decorated with water-pots filled, the gods being worshipped with incense, perfumes and oblations." The special rites to be observed in connection with the consecration of temples and the formal entrance of the god therein will be detailed in the subsequent lecture.

## CHAPTER IV.

## (Lectures IV and IX.)

## On the Consecration of Images.

IMAGES classified into (1) ESTABLISHED, and (2) SELF-REVEALED, 2; the latter not necessarily of fraudulent origin, 3; Inferiority of artificial images, 4; Pratishtha,—the meaning and different derivations of the word, 5, 6; merits of consecrating images! considered separately from the merits of consecrating temples, 7; texts extolling consecration of images, 8-14.-IMAGES CLASSIFIED according to Modes and Materials of construction, 15-20; worship of paintings, Gossami v. Gossami, 21; Images made of clay, 22-24; quality of clay to be used, 25; process of construction, 26, 27; the process in "Durga Puja," 28; quality of clay required for lingams, 29; Images of wood, 30; directions for cutting the timber, 31; the image of Jagannath, 32; Images of stone, 33; Images of metals,gold, 34; silver, 35; baser metals, 36; Metals for lingams, 37; mercury, 38; Gems for images, 39; for lingams, 40; Images encrusted with stones, 41. Animal products used for making images, 42; Images and lingams made of fragrant substances, 43; of flowers, 44: other materials for lingams, 45: Special efficacy of different materials, 46.—Size of images, 47; rule for images in separate temples, 48; rule for a lingam of clay or gem, 49.—SHAPE AND FIGURE of images, 50; rule for lingams, 51; DEFECT of construction in images and its consequences, 52-55; defects excusable in certain cases, 56; Consequences of defects in lingams, 57.—INSTALLATION: time and place, 58; persons competent to instal, 59; Details of ceremonies-(a) Preparatory: Erection of Adhivasa Mandapa, 60; of Vedi, 61; of Snana Mandapa, 62; and of a Mandapa for stores, 63; difference of opinion as to the requisite number of Mandapas. 64: proper time for erecting them, 65; (b) Outside ceremonies: Image purified on obtaining from artist, 66; carried to Snana Mandap in procession with dance,-preliminary ablution and invocation, 67; (c) Ceremonies inside, the Snana Mandapa, 68; the necessity of Sankalpa, 69; its formula, 70; Appointing the Achárya or priest, 71; his qualifications, 72; disqualifications, 73; the functions of Dvárajápakas, Murttidharas, and Murttipas, 74-76; (d) Intermediate ceremonies, 77; worship of the nine Grahas, 78; (e) The beginning of the Acharyás functions, 79; the ceremony of ABLUTION as in Brihat Samhita, 80; as in Bhavishya Purána, 81; (f) The ceremony of PRANA PRATISHTHA, or vivifying the image, 82; its legal effect, 83; the Dakor temple case, 84; summary of judgment, 85; (g) The UTSARGA, or dedication of the temple to the idol, 86; (h) Concluding ceremonies of installation, 87.—DUTIES SUBSEQUENT TO CONSECRATION,—continuation of daily worship, and repurification in case of break in service, 88; in case of image being defiled, 89; Maintenance and preservation of pious works, 90; Worship of images enjoined as a daily duty, 91; The respect due to images, 92.—LEGAL EFFECT OF CONSECRATION: Inseparability of the deity and its consecrated image, Durga Prosad Dass v. Sheo Prashad Pandah, 93.

1. Having finished the subject of construction of temples, I propose now to deal with the topic of the consecration of images therein.

Classification of Images: Established or self-revealed.

The sacred writings of the Hindus notice two kinds of images,—one self-revealed and the other artificially created. Thus in the Padma Purana, Siva declares to Parvati: "Hear, O goddess, I speak of that partial abode of Hari; it is celebrated of two kinds, the established and the self-revealed. The image of Hari prepared of stone, earth, wood, metal, or the like, and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established. Now hear me speak of the selfrevealed. Where the self-possessed Vishnu has placed himself on earth in stone or wood, for the benefit of mankind, that is styled the self-revealed." Vishnu in the above passage is typical of all deities. Even in our own days the miraculous discovery of divine images is not unknown to the faithful. For those disinclined to believe in such miracles, it is easy to explain that the image might be really an old one re-discovered by accident or a new one manipulated for a pious fraud. A common preliminary to such finds is a vision which appears in a dream to one of the devout worshippers, who communicates the same to his relations and neighbours, whereupon a procession is formed to the indicated spot, when lo and behold

<sup>&</sup>lt;sup>1</sup> Uttara Khanda. Adhyaya, 73. Quoted in Sabdakalpadruma, p. 2536 loc. Pratimá.

the image is discovered to the delight of the faithful and to the advantage of the favoured dreamer who becomes the recognised custodian of the god and the medium of his worship. The sceptic will, no doubt, find in this a corroboration of his theory of fraud, and in many cases his surmise might be the correct one. It is not necessary, however, even for a purely rational explanation to impute fraud to the dreamer in every case. The causation of dreams is still so obscure that it is possible to imagine a man dreaming of the existence of an image or other thing after having come across it, or having himself deposited it in a fit of somnambulism; or the dream may be true like other recorded instances in the books which are explained either by way of accidental coincidence, or by some process of that transcendental psychic energy, the existence of which long known in the East is only now being acknowledged in the West, and forms the most prominent scientific problem of our times.

- It is not necessary also to deny a natural origin in Self-revealed There is images not necessarily every case to one of these self-revealed deities. no end to the freaks of nature, and it is quite possible for fraudulent, wood or stone either in natural growth or by the application of other than human agency to assume fantastic shapes in which the devout might find some resemblance to their favourite divinity.
- Coming now to the case of the artificial images Inferiority of (hereinafter called images) it is to be premised that the ages, Hindu sages have always treated this form of worship as an inferior one,—fit only for those who are unable to grasp the abstract conception of the Supreme Being. This will appear clearly from the following texts:-

"I am in the fire for those who sacrifice; in the heart of those who recite prayers; in images for those of small

understanding; for those possessed of true knowledge I am everywhere." 1

- "God is in the fire for those who sacrifice; in the heart of those who recite prayers; in images for those of small understanding; for those possessed of true knowledge Hari is everywhere." 2
- "For the needs of the worshippers, forms are invented of the Supreme Being (Brahma) who is *Chinmaya*, without a second, indivisible and incorporeal."

Meaning and derivation of 'Pratishtha.'

The text of the Padma Purana, cited above, ante, p. 80, speaks of the installation of artificial images according to the rites laid down in the Shastras. The entire process is known amongst the Hindus by the name of Deva-pratishthá or the pratishthá of gods. The latter word is derived from the prefix prati and the root sthá, and means literally standing well or firmly. Its technical meaning is stated in the Mahá Kapila Pancharátra to denote the special presence of an all-pervading essence, in an image of earth, &c., by force of special hymns. Hayasirsha Pancharátra<sup>5</sup> gives another derivation. god Hari is the supreme soul, and his energy is called The goddess Sri is revealed as the prakriti and Keshava is the purusha; the goddess does not remain without Vishnu, nor does Hari without the Lotus-born. The worshipped image is declared to be Krishna, and the pedestal the goddess residing in a lotus; their union in due form is proclaimed to be the pratishthá."

¹ Quoted in Sabdakalpadruma, p. 2538, loc. Pratimá, as from Agni Purana.

Quoted in Sabdakalpadruma, and
 p. 2538.

Quoted in Deva Pratishthá Tattvam, p. 644.

<sup>&</sup>lt;sup>4</sup> Quoted by Raghava Bhatta and Raghunandana:—D. P. T., p. 646.

Quoted in H. B. V., p. 631.

6. The Bhagerata Purana 1 speaks of pratishthá as the means whereby the Universal Soul is localised and made to dwell at a particular place.

The religious merit to be acquired by the conse-merit of concration of images has been already mentioned in the text from building of Yama, ante, p. 44, adduced in the previous lecture in connection with the merit accruing from the consecration of In the ordinary case, the worshipper erects a temple and establishes a deity for worship therein, and hence there is nothing unusual in the merit of both actions being extolled together. Cases, however, may arise where a devout worshipper may consecrate a temple to an existing deity, or where he establishes an image without providing a temple for its home and habitation. Hence, we find some texts dealing separately with the religious merits of Those relating to the erection of temples the two actions. have been already cited. I give below some of those which extol the consecration of images.

- According to the Matsya Purana, the consecration Texts. of divine images is one of the forms of Kriyá Yoga, or the practical form of the Yoga philosophy, which consists of active devotion or the devotion by due performance of the every-day duties of life, as contrasted with the Gnyana Yoga or contemplative devotion. The practice of this virtue is rewarded with faith and salvation.
- To him who establishes an image of Vishnu and worships it the Vishnu Dharma 8 promises the fulfilment of all wishes in this life and eternal beatitude in the mansions of Vishnu in the next.
- In the Vishnu Dharmottara, 4 which is a supplement to the preceding work, the devotee who causes to be prepared an image of Vishnu, is promised immunity from

<sup>&</sup>lt;sup>2</sup> Quoted in H. B. V., p. 631, vide Commentary.

Quoted in *H. B. V.*, p. 631.

Quoted in H. B. V., pp. 631 632.

<sup>4</sup> Quoted in H. B. V., p. 603. A portion of the passage is quoted

in D. P. T., p. 646, as from

Madhavollása.

misfortune whilst alive and transportation to the abode of Vishnu after death. The duration of his residence in those regions of bliss is defined to be one thousand years for each atom constituting the image which owes its existence to him; and the reward is multiplied according to the materials of which the image might be composed, in the same way as for temples, <sup>1</sup> with the exception of the case of bricks which, though used for temples, have been apparently never used for images.

- 11. Narasinha Purana: <sup>2</sup> "He who causes to be constructed an image of Narasinha with the proper insignia, sojourns to the mansions of Vishnu freed from all sins. He who, without any desired object, duly consecrates an image of Narasinha is freed from corporeal bonds; and he who does the same moved by desire for any particular object is beatified in the mansions of Narasinha. He who having caused the construction of an image of Janárdana, has the same duly consecrated, never quits the mansions of Vishnu."
- 12. Gautamiya Tantra <sup>5</sup> promises to the establisher of an image of Vishnu, religious merit equal to that acquired by visiting innumerable holy places, muttering numberless prayers, performing countless sacrifices, travelling in holy forests or reciting all life the name of Hari.
- 13. It is declared in the Bhavishya Purana<sup>4</sup> that he who consecrates the image of Vishnu is freed from all his sins; adorned with all ornaments accompanied by all his relations up to the twenty-first degree, and seated on a resplendent car, he is glorified in the Vishnu-loka, after receiving great honours in the mansions of Indra and the rest.

The reference is to the text of the same work quoted in the third lecture, ante, p. 46.

The whole text is quoted in the Devi Pratishtha Tattvam, p. 646. The first sloka is quoted in

H. B. V., pp. 603-604. The remaining slokes are quoted in the same work at pp. 632-633.

<sup>4 \*</sup> Quoted in H. B. V., p. 633.

<sup>&</sup>lt;sup>4</sup> Ditto, p. 632.

14. The climax of hyperbole, however, is reached in the Hayasirsha Pancharátra and the Skanda Purana. The former 'l declares that, he who has established the god Vishnu, honoured by all the gods, has verily established the whole world, animate and inanimate; that man transports himself with ten ascending and ten descending generations to the mansions of Vishnu; his sins incurred in ten million births are burnt as by fire.

The latter \*delivers itself in the following terms:—"The establisher of an image of Vishnu, is exalted in the mansions of Vishnu, for the same number of thousands of yugas (ages, or periods of four or twelve years) as the number of days for which he preserves the image in the world.

- 15. The Gautamiya Tantra classifies images into Classification of images, act two kinds, the lepya and the lekhya. The former ordinarily cording to denotes moulded figures and may be made to include modes, metallic figures cast in moulds. Similarly the latter usually signifies pictures, but may be made to include chiselled figures of wood and stone.
- 16. The Matsya Purana divides images into four and materials classes, namely: (1) paintings, on canvas, walls, or dion.

  vessels; (2) moulded, of clay; (3) melted, of metals; and (4) chiselled, of wood or stone. Another passage of the same work frecommends the construction of images of gold, silver, copper, iron, brass, bell-metal, jewels, stone, auspicious wood and conch-shells; whilst in a third, the phallic emblem of Siva is recommended to be made of iewels, crystal, clay, or auspicious wood as the worshipper might desire.

<sup>&</sup>lt;sup>1</sup> Quoted in *H. B. V.*, p. 632.

कान्दे। यावदिनानि खोकेऽसिन् ज्ञापवेन् प्रतिमां चरेः। तावसुनस्वाचि विम्युकोके मचीयदे॥ Quoted in H. B. V., p. 632.

<sup>ै</sup> सिया सेप्सा दिशा चैंग प्रतिमा परिकीर्त्तिता। Quoted in H. B. V., p. 610.

<sup>4</sup> Quoted in H. B. V., p. 624.

Quoted in D. P. T., p. 644.

17. The Padma Purana 1 in the passage already referred to speaks of stone, earth, wood, and the metals as the most common substances employed in the construction of images.

Ordinary materials; 18. The Agni Purana speaks of images of Vishnu made of gold, silver, brass, stone and precious stones. The Devi Purana, after giving a long catalogue of the materials employed by different orders of beings (gods, spirits, &c.) for preparing the image of the Devi, enumerates gold, copper, clay, wood, stone and iron for images worshipped by ordinary mortals.

other ingredients. 19. A passage in the Gautamiya Tantra \* speaks of Kasmira, amongst others, as the material of which an image may be prepared. According to the lexicographers this means saffron, as well as the Ficus elastica.

Another classification.

20. The Hayasirsha Pancharátra <sup>5</sup> enumerates seven classes of images, namely, those made of clay, wood, metals, precious stones, stones, sulphur (?) and flowers.

Picture worship. 21. Paintings on canvas, walls and vessels have been mentioned in the texts of Matsya Purana already cited. In the Varaha Purana allusion is made to the worship of paintings (of Vishnu) on walls or canvas. There is no doubt that paintings of some sort on walls would come into existence before the acquisition of the art of painting on canvas. In the Mahabharata is described the worship of the image of the demoness Jará under the name of griha-devi, house-goddess, painted on the walls of every residence. The Hayasirsha Pancharátra promises beatitude in the Vishnuloka for a thousand yugas

<sup>&</sup>lt;sup>1</sup> Ante, p. 80.

<sup>&</sup>lt;sup>2</sup> Quoted in Sabda Kalpa Druma, pp. 2538-2539, loc. प्रतिमा

Quoted in S. K. D., pp. 2537-2538. loe. Pratimá.

<sup>&</sup>lt;sup>4</sup> Quoted in *H. B. V.*, p. 610, and *D. P. T.*, p. 644.

<sup>&</sup>lt;sup>5</sup> Quoted in H. B. V., p. 624.

<sup>6</sup> Quoted in D. P. T., p. 644.

Sabhá Parva, Jarásandhotpattyupákhyāna. Adhy. 18, sls. 2-5. Roy's edition, p. 49.

Quoted in H. B. V., p. 624.

for every picture of Vishnu caused to be finely painted by the worshipper. In our times paintings do not seem to be a very common emblem of worship. Pictures of the gods are put up in houses and chapels for decorative or commemorative purposes, and a large trade in such pictures exists in several religious centres. In the Dewali time, which corresponds in Upper India with a general cleansing and burnishing up of premises, shop-keepers have pictures painted on their doors and walls, or paper pictures pasted thereon. The paintings on the cháls 1 in Bengali images of Durgá are simply a back-ground for the main image of clay. Group pictures of Jagannath, made in Pooree of varying sizes, are carried far and wide by pilgrims and pándás. Those in miniature are often made into amulets and worn on the neck or arm. Those of larger sizes are some times mounted on frames and worhipped in domestic chapels. In the case of Gossamee Sree Greedhareejee v. Ruman Lalljee Gossamee will be found an instance of an endowment of a public temple in which the object of worship was a picture of a highpriest of the Vallabhacharyas, who is looked upon as an incarnation of Krishna.

Images of clay are usually made for temporary Clay images for temporary purposes, the principal examples being the pratimás worship. made in Bengal for the Durgá and other Pujas and the phallic symbols of clay made by worshippers all over India, all which are consigned to the waters after the worship is over.

Figures of gods like (Janesa, Hanumána, and Garuda or decorative are placed on niches or brought out in relief in the plaster not for regular over the gateway of houses, as auspicious emblems. Baked and unbaked figures of various gods are sold as

<sup>&</sup>lt;sup>9</sup> L. R., 16 I. A., 137; I. L. R., 1 Ghosha's Durga Puja, pp. 17 Calc., 3.

toys on festivals, specially in the Dewali time; at the latter ceremonies they occupy the background of worship.

Unburnt clay only for regular worship.

The images intended for regular worship are to be made of unburnt clay. This is inferrible from the text of the Vishnu Dharmottara, already cited,1 which expressly excludes bricks while enumerating the rewards promised to those who construct images of different substances. The positive prohibition is to be found in the Krityatattvárnava,2 which says that one who worships the goddess Durgá in burnt clay is converted into ashes Considering that such by the wrath of the goddess. images are installed only for a temporary purpose and afterwards consigned to destruction, the prohibition of the use of burnt clay is easily explainable by a desire to secure the early dissolution of the image and its consequent insurance against desecration by being put to base uses or disrespectful treatment.

Quality of clay.

25. The clay is to be gathered from the banks of rivers or from other auspicious places; different colors being recommended for the different varnas (castes), namely, white for the Brahmin, red for the Kshattriya, yellow for the Vaisya, and black for the Sudra. According to the Hayasirsha Pancharátra, the clay should be kneaded after being mixed with various astringent decoctions and milky juices derived from diverse plants, as well with various bovine products, and then let lie for a month.

Substratum of straw.

26. The Matsya Sukta Tantra prohibits a householder from constructing for worship an image purely of clay, but recommends an inner substratum of straw.<sup>5</sup> There is

<sup>. 1</sup> Ante, pp. 83-84.

Referred to in Ghosha's Durgá Puja, p. 7.

<sup>&</sup>lt;sup>8</sup> Hayasirsha Pancharatra, quoted in H. B. V., p. 616; also

Ghosha's Durga Puja, p. 7.

<sup>4</sup> Quoted in H. B. V., p. 616.

Quotea in Prána-Toshini, p. 294. Cf. Ghosha's Durgá Puja, p. 2.

no doubt much to be said in favor of this process, which greatly facilitates the drying of the image and effects a considerable reduction in its weight and fragility. Hayasirsha Pancharátra 1 directs a stake made khadira or other sacrificial wood to be placed upon the bottom-plank, which in later developments does the duty of the Jewel-throne. The straw is to be worked round this stake and the clay comes in as the uppermost layer.

The following account of the processes for making The process the images of Durgá and her accompanying deities is tion, as in "Durgá taken from Babu Pratápa Chandra Ghosha's treatise,<sup>3</sup> and Puja": mutatis mutandis the same process is followed for the construction of other images similarly intended temporary worship:---

"On the day of Ratha Yatra, i.e., on the second Commenceday of the bright half of the month of Ashadha, a piece of bamboo-slit of the required length is properly cleaned and smoothed and rounded by the kumbhakara (potter), and then taken up to the room where the family idols are kept; the family priest, after worshipping Vishnu, anoints it with chandan, a sandal wood paste, and invokes Durgá upon it. This piece of bamboo-slit remains in the same room till on the 8th day of the waning moon of Sravana, i.e., till the Janmashtami, when the architect of the pratimá brings it down. The frame-work (katamo) The frameis then commenced. The materials are scrupulously collected, and every precaution is taken to preserve their purity (i.e., freedom from defilement by unbelievers). The materials are pieces of bamboo-slits, unpealed garan (Ceriops Roxburghianus, Arn) yearlings, dried ulu grass (Imperata Cylindrica, Beauve) and a plank from mango timber. The carpenter then drills holes in the plank at an auspicious moment, and the kumar builds the frame-

<sup>&</sup>lt;sup>1</sup> Quoted in *H. B. V.*, p. 616.

<sup>2</sup> Durgá Puja, pp. 2-4.

The use of straw.

Moulding of figures.

work upon it. Rough skeletons of the idols are made with ulu straw and then a dough of earth from the Hugli, cowdung, and husk of rice is made up, and with the earth thus prepared the kumar moulds up the figures. are seven in number, four of which are removable, and the principal three which are centrical in the group, are attached to one another. All the figures, except one of the lowermost figures of the central group and the rightmost one, are first made headless. The heads are prepared by the kumar at his house. The figures are then allowed to dry for about a fortnight or twenty days, when again an auspicious moment is fixed upon for Plastering and covering over the idols with a plaster of finer earth, and it is then that the heads to those figures, which had not been fixed unto them, and the fingers of all the figures, are put on. The snake which encircles one of the centrical figures is at this time formed, so also the top piece or chal as it is called. The small nooks on both sides of the frame-work are next fitted up with two groups of figures and miniature weapons, and the head of a buffalo and a mouse are then moulded. Indeed, before the waning fortnight of Asvina, the kumar finishes his work, and then the figures are left to dry for some days. The painter enters appearance generally on the third or the fourth day of the waning fortnight of Asvina, and paints figures according to the directions given in the Shastras. On the fourth or rather the third day of the waxing fortnight of Asvina, i.e., about three or four days before the Puja, the Mali decorates the idols with tinsel and imitation orna-

Painting.

fluishing.

Decoration.

are called Sajwallas (ornament makers), or Dakwallas (dealers in tin)." The hair of the idols is made of blackened jute. (See p. VIII of Appendix to Ghosha's Durgá Puja, note (2.);

<sup>&</sup>quot; Formerly the malis (men of the gardener caste) used to decorate the idols. But now-adays the ornamentation of the idols is very expensive and forms a lucrative trade by itself; and those who follow it

ments. The idols are ready for worship on the evening of the sixth day of the waxing fortnight of Asvina.

"On the plank of wood is raised about a foot high a Other details. platform of wicker-work covered with plaster of earth. On this platform rest all the figures, their real weight being supported by horizontal props attached to the strong. frame-work of bamboo-slits and garan, which is shaded from the front view partly by the figures themselves and partly by a plaster of earth. Supported on the framework of the back is the richly-moulded chal, divided into three semi-circular compartments with the convex side projecting upwards. In each compartment are painted, according to the injunction of the Shastras, figures of various gods and goddesses, and scenes of several battlefields. From the two uppermost corners of the frame-work project two figures of Nilakantha bird, Coraccias Indicas. ..... At places where the ulu straw is not available, the substratum of the figures is made with the straw of paddy. In some families, however, the same frame-work is used every year; and when the plank gets rotten, a bit from the old plank is attached to the new."

- 29. For the phallic emblem of clay, the same recom-Clay for lin-mendation as to four colors is made in the Lingárchana gams.

  Tantra.¹ The image in this case is made of pure clay, from day to day.
- 30. Wooden images of gods though made as toys or Wood for carved over panels and lintels are not in our days very commonly the objects of established worship. The Matsya Purana<sup>2</sup> in passages already cited directs the use of Subha dáru, auspicious wood, in the preparation of images or lingams. In the absence of any express directions, I take it that the auspiciousness would depend upon the

¹ Quoted in Prána-Toshini, p. 367. चतुर्था पार्थिवं सिङ्गं।

<sup>&</sup>lt;sup>2</sup> Ante, p. 85.

same rules as those previously described for timber in connection with the construction of temples.

Rules for cutting timber. 31. In the Brihat Samhita, directions are given to regulate the cutting of timber for the purpose of preparing wooden images, which are similar to those given in the Matsya Purana in the case of cutting timber for dwellings whether of gods or of men, the ceremony being called by the same name Vana Pravesa (entering the forest). The selection of an auspicious day, the offering of valis to the presiding divinities or spirits, the selection of particular sorts and species of trees, and the avoidance of others, the desirability of the tree falling towards the east or north when cut down, as well as the omens indicated by the colors at the incision are common to both ceremonies.

Special rules for images.

A special rule in connection with timber being cut for the construction of images is thus laid down by Varáha Mihira<sup>3</sup>:—" Mark the quarters on the tree, as well as its upper and lower end, since a phallus or an idol ought to be thus placed that its sides are turned to the same direction." The Hayasirsha Pancharátra treats at some length of the ceremony of forest entrance mainly in connection with the acquisition of stones for the construction of images, but it is incidentally mentioned therein that the rules are the same, mutatis mutandis, for stone and timber, and the rules so given include those given above on the authority of the Matsya Purana and the Brihat Samhita.

The image of Jagannath.

32. The temple of Jagannath in Pooree affords an instance of the worship of wooden images. The principal images in this shrine, namely, Jagannath, Balabhadra, and

<sup>&</sup>lt;sup>1</sup> Lecture III, p. 72.

<sup>&</sup>lt;sup>2</sup> Adhyaya, 59. ib. Ind., pp. 323-325. Of. Adhy. 53, sls. 120, 123.

Brihat Samhita, Adh. 59, sl.
 Bib. Ind., p. 324. Journal of the Royal Asiatic Society, New Series, Vol. VI., p. 331.

Subhadrá, are made of wood. In fact, the supreme divinity is styled daru brahma, or the wooden manifestation par excellence of the Supreme Deity. According to the legends in the Puranas, the three original images were fashioned by a divine artist out of a trunk that came miraculously floating from the sea and was stranded near the temple for the express purpose. In modern times the images are renewed every twelve years, the wood used being that of the Nim tree. The tradition amongst the faithful is that the log destined for the purpose still appears punctually as a sea-drift and is taken charge of by the priests, they being the only privileged spectators of the recurring miracle.

33. Stone images are one of the most common types Images of now prevalent in this country. In public worship, stone is almost the sole substance now employed for the construction of lingams. Stone images of gods and goddesses are also very commonly used in public as well as private chapels. Kulluka, in commenting on a passage in Manu, where mention is made of idols, explains the word to mean idols made of stone, &c. is no doubt that in point of durability the material compares favourably with those which we have been hitherto considering in detail. The Hayasirsha Pancharátra<sup>8</sup> dilates upon the ceremonies to be observed in Ceremonies gathering the stone which has afterwards to be fashioned the stone. into the image or emblem of a god. The rules laid down possess a very close resemblance to those already described for wood. The further special directions worth noting Directions as are these: -Stones attacked with saline or acid efflores- to quality. cence, thrown up on the banks of rivers, situate in barren

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<sup>&</sup>lt;sup>1</sup> Hunter's Orissa, Vol. I, pp. 92 93. Brahma Vaivartta Purana, quoted in S. K. D., P 1257, loc.

<sup>&</sup>lt;sup>3</sup> Samhita, IV, 130. <sup>8</sup> Quoted in *H. B. V.*, pp. 624-

जमम्राच ।

soil or in ant-hills, warmed by solar rays, or burnt by forest fires are to be avoided. Those which are smooth, of uniform colour, underground, untouched by solar rays, immersed in water are approved. Stones are also classified as infant, young, adult and old, according to the increasing scale of their hardness. The very soft and the very hard are not to be used, but the two medium, classes are recommended. The stone so selected is to be brought and placed in the working-shed which is to be erected to the north of the temple, where again the stone is to be worshipped before being taken in hand by the sculptors.

Of metals.

34. Metallic images, in the usual course of human progress, must belong to a stage subsequent to that in which images were first made of earth or stone, although a knowledge of the metals must afterwards have immensely facilitated the fashioning powers of man over stone. Of the pure metals we find gold mentioned in the Ashwal-áyana Grihya Parisishatha, and in the passages of the Matsya Purana, Agni Purana and Devi Purana, already cited, ante, pp. 85—86. They are also alluded to in the Mahabharata, where a lady's resplendent beauty furnishes the groundwork for the simile, "like an image of gold."

Gold.

Silver.

35. Silver is also mentioned in the same treatises except the last, about which I am not positive. There is a natural desire in wealthy endowers to utilise the precious metals for the images endowed by them. Their very value, however, has made them objects of cupidity. Foreign invaders like Mahmud of Ghazni made them a regular article of booty, and even petty thieves, now and then, are smitten with such devotion to such divinities as to desire uninterrupted communion.

<sup>1</sup> Cf. सुग्रेंचजां in Agni Purana, quoted in S. K. D., p. 2538.

<sup>&</sup>lt;sup>2</sup> Hayasirsha Pancharátra, quoted in H. B. V., pp. 604-5, 626.

<sup>\*</sup> IV, 3, Bib. Ind., p. 335.

<sup>&</sup>lt;sup>4</sup> Adi P. 173, 27. Roy's edn., p. 452.

- 36. The baser metals are therefore now more common-Baser metals. ly employed to furnish material for worship. The increasing poverty of the country may also furnish a partial explanation for the same fact. Of these copper 1 and its alloys, brass 2 and bell-metal, 8 are the most frequently mentioned. Iron 4 also is mentioned, but not so frequently:
- 37. For the construction of lingams various treatises Other metals mention the additional names of the following metals, namely, tin, lead, and mercury. Of metallic compounds, orpiment is mentioned, and of alloys one made of three metals (gold, silver, and copper), and another of eight metals (gold, silver, copper, tin, lead, brass, iron, and steel). Salt, which chemically speaking is a metallic compound, may as well be mentioned here. It is another of the substances mentioned in the Shastras as material for the making of lingams.
- 38. It might at first sight appear impossible to Mercury. construct any fixed object from such a liquid as mercury.

<sup>&</sup>lt;sup>1</sup> Ashwalayana Grihya Parisishta, IV, 3. Bib. Ind., p. 335. — Matsya Purana, in D. P. T., p.

<sup>&</sup>lt;sup>2</sup> Devi Purana, &c., &c., in S. K. D., p. 2538.

<sup>\*</sup> Hay a sir sha Pancharátra quoted in H. B. V., p. 624.

<sup>\*</sup> Gautamiya Tantra, in D. P. T., p. 644.

राज्ञमायुः प्रवर्दनं। सत्यस्त्रक्त quoted in P. T., p. 364. प्रजावृद्धिदरं राजं। स्टब्स्यस्य quoted in P. T., p. 365. सपुर्भोगायसं सिजं। कास्त्रोत्रर quoted in P. T., p. 305.

<sup>•</sup> As above. **अजवसमुद्रय** quoted in *P. T.*, p. 365.

<sup>&</sup>lt;sup>1</sup> पारद्श महाभृत्ये। पद्मपुराब quoted in *P. T.*, p. 364, quoted in *P. T.*, p. 366, पारदे वाच महायो। शिवधक्ये।

<sup>\*</sup> Garuda Purana, quoted in P. T., p. 365.

<sup>ै</sup> निकीरमधार्व किशं। ध्रमध-समुख्य quoted in P. T., p. 366.

<sup>10</sup> सित्रजं सम्बेसिदिदं। कालोत्तर quoted in P. T., p. 365. चहली स-स्यं लिक्नं। खन्नसमुब्द quoted in P. T., p. 365.

<sup>ा</sup> सीभाग्याय च खावचं। खचव-चसुचय quoted in P. T. p. 364. बस्ने खवचकं खित्रं। नवक्पुराच quoted in P. T., p. 365. खवचेन च सीभाग्यं, ditto, ditto.

The books, however, prescribe certain incantations assisted by levigation with certain vegetable juice for solidifying that ordinarily liquid substance.

Of gems, for images in general.

39. Gems or precious stones have been collectively indicated under the name of ratna in some of the texts already cited. From the very nature of things, the images wholly composed of such materials must be of small dimensions in a general and comparative sense. For the same reason, there is no minimum laid down for gem lingams, although with other materials they are directed to be made not smaller than the thumb.<sup>2</sup> Crystal and coral images might reach comparatively large sizes, but in the case of the gems properly so-called the margin of size must always be very small. Pearls, sapphires and crystal are mentioned amongst the materials for pratimas in the Grihya Parisishta of Aswaláyana.<sup>3</sup>

For lingams.

40. The list as regards lingams is very much larger, and includes, besides the above, the sun-stone, the moonstone, the load-stone, diamond, emerald, lapis lazuli, and talc and seven other kinds of minerals, "bright as lightning and self-illuminating at night." Each of them is efficacious for special purposes. The pearl gives fortune, the moon-stone conquers death, the sun-stone gives power, the lapis lazuli deprives enemies of their power, diamonds, crystals, and emeralds fulfil every kind of desire, and so on.4

Efficacy of different gems.

रत्नादिशिवनिकानि मानिमञ्चावशा-क्ववेत्! quoted in P. T., p. 367.

<sup>&</sup>lt;sup>1</sup> माह्यकाभेद्रतन्त्र quoted in P. T., pp. 368-369.

<sup>ै</sup> कुर्चाताजुडतो इसंव कदा-चिद्य इचित्।

<sup>•</sup> IV. 3. Bib Ind., p. 335.

<sup>&</sup>lt;sup>4</sup> Quotations in *P. T.*, pp. 364—366:—

पद्मपुराचं—

\* \* \* सीभाग्याय च मीतिकं।
चन्द्रकानं सत्युजित् स्थान् \* \* \* #
वीरमिषोदय-धत-कत्योत्तरेऽपि—
चन्द्रनाद्याः सृता द्वाहो सच्यो विद्युः
दुज्जाः।
राजो प्रकाशकाः सम्मेविवासावात-

- 41. Images encrusted with stones might also by stretch Images encrusted with of language be taken to be included within this class. gems. The most famous instance of such ornamentation is connected with the Kohinoor diamond which, according to tradition, was once so attached to the forehead of the 'Lord of the World' at Pooree, and was stolen therefrom.
- The text of the Matsya Purana already quoted Of conch-shell speaks of images of conch-shell. The word in the original may also mean horn or the frontal bone, specially of an elephant. The conch-shell is a particularly sacred substance with the Hindus. The Matsya Sukta 1 interdicts the worship of lingams made of sankha in the present Kali-Prohibited in yuga. Some horns, e.g., those of the rhinoceros, are held of horns. in great esteem for religious purposes. Bones, however, are generally considered unclean, although much used in mystic rites and incantations. The Garuda Purana<sup>2</sup> mentions lingams of hair and bone. In this connection, I may of hair and observe that lingams made of other animal products are also mentioned in the Shastras. As might be expected, the products of the sacred animal—the cow,—are in the of other Milk, curds, butter, ghee, and even the bovine ducts. excrement are declared in the same work to afford the raw material for lingams intended for worship. In the last

रसैर्गे श्रेष मामावर्षा स विज्ञेया बबाद्याः स्काटिकाद्यास सम्बेकामप्रदं पुर्ग लिई मच्छपुराषे---षयस्त्रामं चतुर्था तु न्नेयं सामान्य सिबिष्। सारसंकृषे विश्वेषः— \* तैजरं खर्थकानाजं। वैद्र्यं मनद्रमञ्जू P, HLE

माहकाभेदतन्त्रे द्वादश्पटकी-स्फाटिके सम्बेसिबिः स्थानचा मरकते प्रिये।

े तथाच मत्स्यस्त्रक्ते। ताविक्षत्रं करों नाचेत् वैत्यस्य शीय-रक्तचन्दनश्चिष्ठच महुन्तांस्यायस्तया 🛭 quoted in P. T., p. 365.

<sup>९</sup> केशा स्थिमकार्व सिन्नं सर्वेश्च-विनाशनं।

quoted in P. T., p. 365.

case, the excrement is directed to be caught in the air before it reaches the ground. The Shiva Dharma<sup>1</sup> and the Kálottara<sup>1</sup> also dwell upon the efficacy of gomaya lingams, and in the latter work lingams of gorochaná (a substance found in the head of the cow) find a place.

Fragrant substances for lingams.

I have already cited the passage from the Hayasirsha Pancharátra which mentions images made of fragrant substances (gandha). In the Garuda Purana? and Lakshana Samuchchaya, similarly, lingams made of gandha are enumerated amongst others. Of individual fragrant substances, so to be utilised, the former speaks of camphor, and the latter o musk, saffron, white aguru and black aguru. <sup>5</sup> Saffron is also mentioned in the Gautamiya Tantra. 6 Red-sandal (rakta chandana) is mentioned in the Matsya Sukta, 7 but it does not clearly appear whether the wood or its paste is intended to be denoted. Apart from these individually fragrant articles. the Garuda Purana 8 furnishes a recipe for preparing the gandha lingam or fragrant phallus par excellence, by an admixture, in certain proportions, of most of the substances already enumerated.

Flowers for images and lingams.

44. This leads us by a natural transition to flowers, which are mentioned as one of the materials for images in the *Hayasirsha Pancharátra*. They are also mentioned

<sup>&</sup>lt;sup>1</sup> Quoted in P. T., p. 366.

<sup>&</sup>lt;sup>2</sup> गम्बोत्यं ग्**षदं भू**रि। quoted in *P. T.*, p. 365.

<sup>&</sup>lt;sup>3</sup> गान्य सीभाग्यदं खिक्कं। quoted in P. T., p. 364.

<sup>&</sup>lt;sup>4</sup> कपूर समावं किते। quoted in . T., p. 365.

<sup>5</sup> समाय समुमयेऽपिः— \* \* \* \*
क्रमूरी समाव सिन्नं धनाकाङ्गी प्रपूसमूरी समाव सिन्नं धनाकाङ्गी प्रपू-

कानिकामस्तु सततं सिक्षं कुङ्ग्प स्कारं॥

चेतागुरुषसुद्भूतं मचावृद्धिविवदेनं। भारवामन्निदं सिन्नं सम्याग्व-ससु-ऋवं॥

quoted in P. T., p. 366.

<sup>&</sup>lt;sup>6</sup> Quoted in D. P. T., p. 644.

<sup>&</sup>lt;sup>1</sup> Quoted in P. T., p. 365.

<sup>&</sup>lt;sup>8</sup> Quoted in P. T., p. 364.

in the Lakshana Samuchchaya. The gandha-pushpamaya lingam which occurs in the Kálottara a may mean either a lingam made of fragrant flowers or one made of fragrant substances and flowers.

45. Even this does not exhaust the substances detailed Other vegein the books as possible materials for fashioning the lingam for worship. Various texts include boiled rice, treacle, sugar, sugar-candy, sesamum paste, paddy husks, bamboo-shoot, paddy, fruits, durva grass, sand and ashes, within the above category.

table products,

Each description of material as illustrated in the Efficacy of case of different gems has allotted to it a special efficacy different mamostly for the benefit of the worshipper. It would be useless for our present purposes to describe the whole in detail, but the following from Varáha Mihira may serve as a sample for the rest. "An image being of wood or clay, promises long life, fortune, strength and victory; one of precious stone, tends to the weal of the people at large; a golden one yields prosperity; one of silver bestows renown; one of copper, increase of progeny. A statue or phallus of stone insures a great acquirement of ground. (The use of copper and several other materials is prohibited in Kali-yuga by a passage in the Matsya Sukta. 5)

Those curious to pursue the subject are referred to the texts collected in the Hari Bhakti Vilása and the Pránatoshini.

47. The size of images seems to depend upon two con- Size. siderations: firstly, as to their location in a domestic chapel or in a separate temple mostly intended for public worship;

<sup>&#</sup>x27; पोणं शुक्तिप्रदायदं। quoted in P. T. p., 364.

Quoted in P. T., p. 366.

Quoted in P. T., pp. 364—366.

<sup>\*</sup> Brihat Samhita, Adhy. LX, sls. 4-5. J. R. A. S., New Series, Vol. VI, p. 333.

<sup>ं</sup> तावस्ति वसी नायेत

<sup>&</sup>amp;c. See P. T., p. 365,

Of domestic,

and secondly, upon the materials employed for the construction. The Matsya Purana 1 lays down the limit of length for a domestic image to be from one thumb-knot to one span, larger sizes being allowed in detached temples. Raghunandana 2 alludes to a text which permits an increase in the size of the domestic image in case of stone. For images of Vishny the Gautamiya Tantra lays down

and non-domestic images.

Of earthen

images,

Raghunandana <sup>a</sup> alludes to a text which permits an increase in the size of the domestic image in case of stone. For images of *Vishnu*, the *Gautamiya Tantra* lays down three classifications of size, the good being fifteen *angulis* high, the medium twelve, and the inferior eight *angulis*. Apparently, these limits are intended for non-domestic images, but the point is not absolutely clear. Earthen images, generally, have a larger standard of size allowed to them, and as we have seen before they are mostly intended for domestic worship, although in some cases they are worshipped in a public hall separate from any particular human habitation. In connection with the clay images of Durga, &c., Babu Pratápa Chandra Ghosa <sup>5</sup> remarks as follows:—

as of Durgá.

"The size of the pratima varies greatly in different families. Some have the plank about  $4\frac{1}{3}$  cubits long, and the figures are accordingly about 4 cubits high. Such enormously large and unwieldy pratimas are rare. In the Shastras, however, there is no direction given as to the size of the pratima, except when it is made of precious metals or crystals, though it is expressly stated that the pratima should be so made as to excite veneration and love. Miniature pratimas may be here and there seen,

q वें!॥ Quoted in H. B. V., p. 604; also quoted in D. P. T., p. 644, with the comment उद्देश करहेण, प्रासादे कथिका ग्रुभेति वचनात्।

<sup>ः</sup> चहुन्न पर्व।दारस्य वितस्ति यावदेवतु। स्टेड वै प्रतिमा बाय्यां नाधिका सस्त्रते वधैः॥

<sup>&</sup>lt;sup>2</sup> तनाधिकापि ग्रैं लजा स्टइ ग्रुभदा तन्त्रान्तरिष्यक्ता। D. P. T., p. 644.

<sup>&</sup>lt;sup>8</sup> Quoted in *H. B. V.*, p, 610.

<sup>&</sup>lt;sup>4</sup> इयशीर्व पश्चराच quoted in H. B. V., pp. 616—623.

<sup>&</sup>lt;sup>5</sup> Durga Puja, Appendix, p. i.

but they are not general. The usual size of the pratima is with plank about  $3\frac{1}{4}$  cubits long and  $1\frac{1}{2}$  cubits broad; these dimensions are observed every year in the construction of the same." I wish, however, to add that the A limit. Matsya Sukta does contain a rule about the size of pratimas of Durga, namely, that a householder should not prepare an image of three cubits and-a-half, but one of three cubits or less.

- 48. The rule about the size of images installed in sep-Rules for arate temples is thus laid down in the Matsya Purana: temples. "Images for temples should be made from one to sixteen (cubits) in height. According to his wealth the worshipper should make it medium, large or small (in size)." A rather different rule is given by Varáha Mihira: "A statue one cubit high is beneficial; one that measures two cubits in altitude brings wealth; an image of three cubits promotes peace; and one of four, abundance."
- 49. The size of a clay phallus ought, according to the Clay lingams. Vishwasára Tantra, 4 to correspond to the thumb-joint of the worshipper. This is rather inconsistent with the Tantric text already quoted, 5 which makes the size of the thumb the minimum for such purposes. The same text makes an exception in favour of gem lingams which may Gem lingams. be smaller still. In the case of stone, the size may vary

Dr. Kern in J. R. A. S., N. S., Vol. VI, p. 328, is mistaken in supposing this and succeeding rules to be confined to the image of the Sun treated of in the preceding sloka.

<sup>5</sup> Ante, p. 19.

<sup>े</sup> Quoted in P. T., pp. 294-295. 'न रही स्टब्सयों कुर्यो है वैतासमयीं कचित्। चिरस्तां दृष्मभाञ्च विल्वयुग्ने सन-चैवेत्॥"

Quoted in H. B. V., p. 604.
 Brihat Samhita, Adhy. 58,
 sl. 49. Bib. Ind., p. 321.

पट्कमंदीपिकाश्चन विश्वसार-तन्त्रेऽपि। स्वाद्य पर्वमानम् क्रता सिक्तं प्रपू-ज्येत्। स्ट्टादि सिक्तम्बटने प्रमाणं परिकी-भितां॥ P. T., p. 367.

from that of the thumb to the most gigantic proportions, and the larger the better, for the merit increases with the size. 1

Shape and figure.

50. The shape and figure of images forms the subject of minute regulations in the literature of Hindu art and religion. Very full descriptions are given not only of the shape and colour which the image of a particular deity should assume, but also of its surroundings, like arms, ornaments, dress, vehicles, attendants and the like. The proportions of size are also fully prescribed. Those desirous of pursuing the subject may find the authorities collected in the *Hari Bhakti Vilasa* and its commentary. The 58th chapter of the *Brihat Samhita* <sup>2</sup> is also a good compendium on the subject.

Form of tin-

51. The rules for the construction of the *lingam* are less numerous. Brihat Samhita: § "(For the construction of an emblem of Siva), set out in the length the (measure of the) circumference of the round part, and divide the whole phallus into three portions, of which the part at the bottom must be quadrangular, that in the midst octangular, and the rest round.

"Sink the quadrangular portion into a pit in the earth, and put the middle member into the cavity of the pedestal. The pedestal is visible upwards to its cavity, in all directions, over an extent equal to its height."

Defects:

52. The greatest care has to be taken in the manufacture of the images intended for worship. Whilst on the

<sup>ं</sup> माह्यकाभेदतन्त्रे।
शिक्षादी च मदेशानि च्यूचस पास-दायकं।
चन्नुसमानं देशियदा देमाहि मानकं।
क्रमेद देवदेशिए पासं वक्रविधं स्रोतेत्र्याः

<sup>&</sup>lt;sup>9</sup> Bib. Ind., pp. 312—322. J. R. A. S., *N. S.*, Vol. VI, pp. 322—330.

<sup>&</sup>lt;sup>6</sup> Adhy. 58, sls. 53-54. Bib. Ind., pp. 321-322. J. R. A. S., N. S., Vol. VI, p. 329. Cf. texts quoted in P. T., p. 367.

one hand, according to one authority, 1 an image possessing the required characteristics bestows prosperity by its very presence, and, according to another, 2 the author of an image of Vishnu, possessing the proper characteristics, is beatified for sixty thousand years, dire consequences are their conseto be apprehended from the existence of any flaw or defect in the image intended for dedication. Puránoddhára: 8 "(The Gods) do not accept (the offerings of) food of the man who worships a divine image defective in characteristics; therefore it should be avoided."

According to the Gautamiya Tantra, 4 when a Defect of proman through ignorance or folly sets up an image wanting in due proportions, he acquires no religious merit by its worship. Wherever stands such an image, there is oppression by the King, and the householder is doomed to hell.

54. Varáha Mihira: 5 An image with excessive limbs Defect in bodes peril from the monarch; one with undersized limbs, infirmity to the maker; one with a thin belly, danger of famine; one that is lean, loss of wealth. shews a wound, you may predict the maker's death by the sword. By being bent to the left, it destroys his wife; by being bent to the right, his own life. It causes blindness by having its eyes turned upwards, and care, by the eyes being downcast.

H. B. V., p. 624.

<sup>&</sup>lt;sup>1</sup> Varaha Mihira, Brihat Samhita, Adhy. 58, sl. 29. J. R. A. S., Vol. VI, New Series, p. 326.

<sup>&</sup>lt;sup>2</sup> Agni Purana, quoted in S. K. D., loc. Pratima, p. 2538. Cf. text of Narasinha Purana प्रतिमां सच्चोपेतां quoted, ante, p. 84; also Matsya Purana, quoted in H. B. V., p. 624. चन्पूर्णावचवा चा त्र चायुक्कीप्रदा सदा।

<sup>&</sup>lt;sup>3</sup> श्रीप्रकादोश्चपराचीबारे।

तस्यात्रं नाभिग्रहक्वित तस्यात्रां परि-

<sup>4</sup> Quoted in H. B. V., p. 610.

<sup>&</sup>lt;sup>5</sup> Brihat Samhita, Adhy. 58, sls. 49-52; J. R. A. S., Vol. VI, New Series, p. 328. Also quoted in H. B. V., p. 624.

The same.

55. The same ideas are more fully developed in the Matsya Purana:—1

"The image of the God should never be made deficient or having an excess of limbs. An image with a hideous face causes the death of the owner. A corpulent image destroys the artist, and an emaciated one destroys wealth. One thin in the middle causes famine, and one without flesh causes loss of wealth. One with a crooked nose causes sorrow, and one with a compact body causes fear. A flat-nosed one causes trouble and affliction, and one with no eyes destroys the eyes. One with a defective face and one with sparing hands and feet cause grief. One deficient in limbs and one with short thighs cause errors and madness in men. One with a wry face or one without a waist destroys the King. If the image be without hands or feet, then a great plague is caused; and one without knees or thighs causes the good of the enemy. One without breast destroys children and friends."

Defects where excusable.

56. An exception is made in the Gautamiya Tantra<sup>2</sup> in favour of an image placed upon the top of a mountain, on the bank of a river, at the junction of four roads, in a grazing ground, on the sea-shore, or within a forest. A defect of proportion in such a case is not attended with evil consequences.

Defects in lingams.

57. As might be expected, similar consequences are threatened against the raising of *lingams* defective in proportion, &c. The negative loss is declared in the *Vishvasára Tantra*<sup>8</sup> to the effect that the worship of such

<sup>3</sup> षट्ककादीपिकाश्चन विश्वसारतन्त्र Quoted in *P. T.*, p. 367.

पर्वतामे नदीतीरे चलरे अपट्क गोडभूतिष् ! Quoted i

emblems is entirely infructuous. The positive dangers are thus pourtrayed by Varáha Mihira:—1

"A phallus being excessively lean and long, destroys the country; one which has lost its side, tends to the ruin of the town; one damaged at the top is pernicious."

58. The image or emblem being thus prepared accord-Installation of ing to rule, the next step to be undertaken is its installation. Confining ourselves for the present to the fixed images, that is those intended to be permanent fixtures at the place of installation, we find the directions as to time and place to be much the same as those already Time and mentioned for the construction or consecration of temples.

59. As to the parties competent to celebrate the instal- Who can lation, the Devi Purana 2 directs that the gods should be installed with reference to the varnas and ásramas, that is to say, with due regard to the caste or order of the worshipper. Certain divinities are supposed to be particularly attached to individual castes. Thus, according to one text, 8 Sambhu is the god of the Brahmins, Gods of the Mádhava of the Kshattriyas, Brahmá of the Vaisyas, and four sects. It Ganesha of the Sudras. In practice, however, these distinctions are not much prevalent, and it is left to individual faith to instal any particular deity. Broadly speaking, at the present day, Vishnu, Siva and Sakti, under various Gods wornames or shapes, divide the homage of the world of shipped by all. Hindu faith. The Devi Purana 4 licenses all the four

वैकानां तु भवेद् ब्रह्मा प्रद्रित्यां गर्य-

Manu quoted in Wilson's Works, Vol. I, p. 2.

4 चातुर्वेणस्या विस्ताः प्रतिष्ठायः सुसाधिभिः।

Quoted in H. B. V., p. 635.

<sup>&</sup>lt;sup>1</sup> Brihat Samhita, Adhy. 58, sl. 55; Bib. Ind., p. 322; J. R. A. S., N. S., Vol. VI., p. 329.

<sup>&</sup>lt;sup>2</sup> वर्षात्रमविभागेन देवाः खाष्या **डि** नान्यथा। Quoted in *H. B. V.*, p. 635.

<sup>ैं</sup> विप्राचां देवतं स्वाः चवि-याचामानामाध्यः।

castes to worship Vishnu. Similarly, the Lingárchana Tantra 1 enjoins the worship of the emblem of Siva upon all the four castes, threatening extreme penalties for non-compliance.

Preliminary: Adkivasa and dapa.

The preliminary purification of the image is termed Adhivasa-man. adhivása, and a separate structure styled the adhivásamandapa has to be erected. Varáha Mihira<sup>2</sup> prescribes its location to the north or east of the temple or house in which the deity is finally to repose; the mandapa or shed is to be provided with four archways, covered with sprouts from auspicious trees, and adorned with wreaths and streamers of various colours. The Matsya Purana<sup>3</sup> contains the same directions as to location as given above, but the Bhavishya Purana, the Hayasirsha Pancharátra and the Pratishtthá Mayukha enjoin the erection to be placed in front of the temple. There is really very little conflict between the two precepts, it being remembered that usually a temple faces north or east, and that the same rule is applicable to ordinary houses. As to the archways, the authorities above cited (with the exception of the first) recommend branches of the plaksha (Ficus infectoria) for the east, the udumbara (Ficus glomerata) for the south, the ashwattha (Ficus religiosa) for the west, and the vata (Ficus indica) for the north.

Trees used for the archways,

> <sup>1</sup> त्र**क्ष**विटचनियो खिन्नं न पुजयेत्। तत्त्रचात् परमेशानि भयश्राखना-

> मियः 🛭 द्भावस्य परमेशानि सदा द्भावस्वकृतेत्॥

Quoted in H. B. V., p. 638.

Quoted in H. B. V., p. 638.

Quoted in P. T., p. 371. Brihat Samhita, Adhy. 60, sls. 1-3; Bib. Ind., pp. 325-326; J. R. A. S., N. S., Vol. VI., pp. 332-333.

प्रासादस्थोत्तरे वापि पर्वे मखपो भवेतु ।

<sup>&</sup>lt;sup>4</sup> प्रापादाञ्चातिदुरे मच्चपमपतः।

<sup>&</sup>lt;sup>5</sup> प्रासा**दस्त्राप्रतो मदः। (यातमस्य**पः) Quoted in H. B. V., p. 638.

provisions seem to be related to those in Vastu Vidya, 1 which pronounce these trees to be of evil omen if situated to certain directions of the residence, and of good omen if to the contrary. The reason for the selection of these trees can be traced back to the Grihya Sutras:-

Gobhila: 2 "The ashwattha is presided over by Aditya, the plaksha by Yama, the nyagrodha is (sacred) to Varuna, and the udumbara to Prajapati."

The mandapa is to be covered in all directions with Decorations. green boughs, 8 and ornamented with flower wreaths, 4 streamers, looking-glasses, bells, chowries, &c., and an awning spread under the roof. Sand from the Ganges river is to be strewn, and the panchagavya sprinkled on the outside. 5

A vedi or altar is to be erected in the middle of Vedi. **61**. the mandapa, and four kundas excavated in the direction of the four cardinal points of the compass from the vedi. 6

North of the adhivása-mandapa is to be erected mandapa. the snána-mandapa or hall of ablution, square in shape and provided with four doors, and provided with means

भवनका वटः पूर्वे जातः स्थात् सर्व-कामिकः।

चदुन्नरस्था याम्ये वादवे पिष्यसः

बच्चोत्तरतो धन्यो विपरीतो विप-खेरे ।

Quoted in Commentary to Gobbila Sutra; Bib. Ind., p. 715; Gobhila Grihya Sutra, IV, 7, 22; Bib. Ind.,

<sup>2</sup> Grihya Sutra, IV, 7, 24; Bib. Ind., p. 713.

<sup>1</sup> See Brihat Samhita, Adhy. 53, sl. 85; Bib. Ind., p. 272; J. R. A.S., N. S., Vol. VI., pp. 293-294; also the text :-

<sup>&</sup>lt;sup>3</sup> मखर्प मख्येदांद्र शाचाभिक समनातः। इयहीर्व पश्चराम quoted in H. B. V., p. 638.

<sup>&</sup>lt;sup>4</sup> Says Varáha Mihira: "For the east side of the shed are prescribed variegated wreaths and streamers; for the south-east side red ones; for the south and southwest black ones. They must be white in the west, pale-yellow in the north-west, variegated in the north side, and yellow in the northeast."-Brihat Samhita, Adh. 60, sls. 2-3; J. R. A. S., Vol. VI, New Series, pp. 332-333.

<sup>&</sup>lt;sup>5</sup> जास्वी-वास्का श्रभां। वाद्यदेशेव विकिरेत्पवगर्वन प्रीच-

<sup>•</sup> H. B. V., p. 639.

for the egress of water. 1 The dimensions of the latter structure are to be half, one-third or one-fourth of the A platform of bricks is to be erected therein, or the entire floor may be sprinkled with sand.

Store mandapa.

A third mandapa has to be erected for the storage of the numerous articles required for the performance of these ceremonies.

Conflict of authorities as to number of mandapas.

64. Varáha Mihira in the text already quoted seems to contemplate the erection of only one mandapa, namely, that for the adhivása, but the other authorities, as we have seen, prescribe three. The omission in Varáha Mihira might be due to the concise nature of his compilation, or to a stage in the development of the ritual when one erection did duty for all three. In the Ashwaláyana Grihya. Parisishta 8 only the first two are mentioned,—the first simply as the mandapa, and the second as the deva-snánamandapa. Further, by express mention, the former accommodates the ingredients for the homa, and the latter the ingredients for the ablution. It seems to me that there must have been three successive stages in the evolution of the ritual marked by the gradual addition to the number of the mandapas.

Its probable cause,

Time for erect-

65. As to the time for the construction of these mandaing mandapas, pas, the Ashwalayana Grihya Parisishta contemplates their erection on the very day of the ceremony of installation of the image. With greater elaboration of the ritual, this came to be too short a time for all the necessary preparations, and so we find the Pratishthá Mayukha 5 declaring that these might be erected seven, five, or two days, or immediately before the commencement of the installation ceremony.

<sup>&</sup>lt;sup>1</sup> H. B. V., p. 640.

<sup>&</sup>lt;sup>8</sup> Bib. Ind., pp. 336-337.

<sup>\*</sup> Ante, p. 106. ·

<sup>&</sup>lt;sup>4</sup> Bib. Ind., p. 336.

<sup>&</sup>lt;sup>5</sup> Leaf 1, p. 2.

The image up to this time has remained in the Outside corehands of the artist, who generally belongs to a low scale fication on in the Hindu gradation of castes. The rise of ideas as to artist. the sanctity of all forms of life led to the conception of a necessity for some purification for the certain, probable or even possible, killing of life which might have attended the operations for the construction of the image from their beginning to termination.

67. In the Grihya Parisishta 1 the image is simply Procession to directed to be brought (apparently from the artist's place) to the hall of ablution, care being taken that during the progress the temple remains to the right of the carrier. The Bhavishya Purana<sup>2</sup> contains only a direction for the formation of a procession of priests, &c., whilst conveying the image from its place of manufacture to the hall of The Hayasirsha Pancharátra 8 contains the latest development of the ritual; namely, the formation of a procession with dance and music, and a preliminary ceremonial ablution of the image with twenty jars of water, either in the artist's place before starting the procession or at its close outside the precincts of the hall of ablution. The following invocation 4 is addressed to the

THE REAL PROPERTY.

delivery by

Quoted in *H. B. V.*, p. 645; also quoted by Raghunandana in D.

P. T., p. 646, in connection with

the next ablution.

प्रवेशयेत पिष्डिकायां तां विष्रैः सान-

<sup>&</sup>lt;sup>1</sup> Bib. Ind., p. 337. <sup>2</sup> Quoted in H. B. V., 644-645. <sup>3</sup> शिस्पिशास्त्रां ततो गर्सा गीत-गदादिभिः खनैः॥ पिण्डिकया ततः॥ ष्यं विंग्रतिकुषाद्धिः सानमण्डपती विद्यः। कापियला परीचेत श्रीमूर्ति तां विच-शि विपशा खायां यथाविधि।

Quoted in H. B. V, p. 644; also compare quotation at p. 645. 4 नमसेऽचे सुरेशाणि विश्वकर्मणा। प्रभाविताश्चेषजगद्याचि लिय सम्प्रज्ञयामीयं नारायणमनामयं। रचिता शिष्पदोषेस्वस्वियक्ता सदा

Preliminary ablution and invocation. image at the end of this preliminary ablution, prior to its entry into the hall of ablution:—

"O Queen of the gods, wrought by Visvakarmá, hail to thee! Salutations to thee, the preserver of thy own-created countless worlds! In thee we worship the god Náráyana, who is free from disease! Mayst thou, being cured of all the faults of the artist, ever remain in perfect (or prosperous) condition."

The artist is rewarded with suitable presents when the image is removed from his custody. 1

Ceremonies inside the snana-munda-pa: laying the idol.

68. The first step in the ceremonies inside the snana-mandapa is thus concisely described by Varáha Mihira 2:— "After smearing (with cow-dung) a plot of ground within the shed, and strewing it with sand, and then with sacrificial grass, lay the head of the image on a throne and the feet on a pillow."

Sankalpa :

In the Grihya Parisishta<sup>8</sup> of Ashwaláyana, it is directed that after the image has been placed in a reclining position on a bed spread over the altar, the worshipper should bathe, perform the pránáyama and the three-fold nyása, as a prelude to making the sankalpa or solemn vow to perform a religious rite.

its efficacy;

69. This solemn resolution is a necessary preliminary to the performance of every religious ceremony. According to the *Bhavishya Purana*, " "whatever men perform without a *sankalpa*, the meritorious effect of the act is diminished, and a moiety of it is destroyed altogether."

its formula.

70. The formula for the sankalpa on the occasion of a pratishthá or installation of an image is thus given in the

<sup>&</sup>lt;sup>1</sup> H..B. V., p. 645.

<sup>&</sup>lt;sup>2</sup> Britat Samhita, Adh. 60, sl. 7. Of. J. R. A. S., N. S., Vol. VI, p. 333. Dr. Kern's rendering, "lay the head, pillow, and feet

of the statue on a throne" is a mistranslation.

IV, 4 Bib. Ind., p. 337.

Ghosha's Durgá Puja,
 p. xxiii.

Pratishthá Mayukha: 1 "On this day (here follow full chronological details), I (so and so), being desirous of obtaining (as the case might be) longevity, prosperity, all progeny, eternal bliss or the love of God, for causing the presence of the divine emanation in this image or lingam, shall perform the pratishthá of the image or lingam of such and such divinity."

- 71. After performing the sankalpa, the worshipper Appointment should, according to the Grihya Parisishta 2 request the door-incanters, sacrificial priest and the Achárya to begin their respective functions.
- The qualifications of the Achárya or superior priest His qualificaare laid down with minuteness in the Devi Purana, the Matsya Purana<sup>8</sup> and the Hayasirsha Pancharátra.<sup>8</sup> As might be expected great stress is laid upon his possessing full knowledge of sacred literature, specially of the Pancharátra and the Vástuvidyá; and also upon his being a devout and devoted worshipper of the divinity whose image is to be installed. He may be either a householder or religious student, of good character, engaging countenance, young in years and born in a country where the black-deer roams in a state of nature. A Brahmin can officiate as Achárya for all the four castes; a Kshattriya, for Vaisyas and Sudras; a Vaisya for Sudras, but a Sudra for none. 5

73. The disqualifications 6 laid down for Acharyas Disqualifications. are very much akin to those prescribed by Manu 7 for Brahmins to be invited at funeral feasts.

Leaf 1, p. 2.

Aswalayana, IV. 4; Bib. Ind., p. 337.

<sup>&</sup>lt;sup>8</sup> Quoted in *H. B. V.*, pp. 635-636.

<sup>4</sup> Cf. Manu, II, 23.

Páncharátra, Hayasirsha quoted in H. B. V., p. 635; also in D. P. T., p. 645.

<sup>&</sup>lt;sup>6</sup> H. B. V., pp. 635-636.

Adh. III, sls. 150-166.

Jápakas.

74. In the religious literature of the Hindus, Japa means the inaudible muttering of prayers for incantations addressed to any deity. The Dvára-jápakas mentioned in the Grihya Parisishta 1 denote priests who mutter prayers at the door of the structure where the image may be placed for the time. In the Hayasirsha Pancharátra 2 provision is made for the appointment of five Jápakas, four for the doors, evidently of the Mandapa, and one for the Garbha, or inner chapel, where the image is finally to be installed.

 ${\bf Image-bearer.}$ 

75. In the same passage there is mention of the appointment of a Murtti-dhara or image-bearer.

Imagekeepers. 76. The Matsya Purana speaks of the appointment of 32, 16 or 8 Murttipas or image-keepers, possessed of the same qualifications as the Achárya in the Pratishthá Mayukha, seight or four Dwarapálas or gate-keepers are recommended to be appointed.

Intermediate ceremonies.

77. Between the sankalpa and the appointment of the priests, &c., which follow each other in the Grihya Parisishta, the Pratishthá Mayukha interpose the ceremonies of (1) the worship of Ganapati, (2) Punyáha Váchana, (3) the worship of the Mátrikás, and (4) the Vriddhi Srádha. The Hayasirsha Pancharátra has directions to the same effect except that the worship of the presiding deities of the tithi and nakshattra is added in the beginning, and that the Punyáha Váchana is postponed till after the appointment of the priests.

Worship of the nine planets. 78. According to Raghunandana, the Navagraha-puja, or the worship of the nine planets, should be performed at the very beginning on the authority of the text of Matsya

<sup>&</sup>lt;sup>1</sup> Ante, p. 33.

Quoted in H. B. V., p. 637.

Quoted in H. B. V., p. 635.

<sup>4</sup> Leaf 2, page 1.

Pratishthá Mayukha, leaf 1, p. 2; leaf 2, page 1.

Purana, which declares that this should be done at the outset as a necessary preliminary to the fruitfulness of all Kámya works.

- 79. The Achárya so appointed, is directed in the Grihya Beginning of Sutra Parisishta to proceed to the Yága-bhumi (the tions place for the sacrifice), the Prásáda (temple) and the Snanshálá (ablution-hall), and sprinkle the same with water from the tips of kusa grass pronouncing the text Apohishtá, &c., and also to strew white mustard seed about. This is followed by the ablution ceremonies of the image.
- 80. According to the Hayasirsha Pancharátra, 2 the Ablution cerimonies: as in image should first be washed with cow-dung, cow-dung Hayasirsha; ashes and earth from an ant-hill, in order to remove the impurity created by the touch of the artist.

Varáha Mihira in his Brihat Samhita in the chapter on setting up seven statues, after directing the erection of the mandapas, and the adornment of its archways with green bows and streamers as mentioned above (ante, p. 106), and after directing the image to be placed in a reclining position in the Snánashálá (as quoted in § 68, p. 110) proceeds further to direct that:—

"Let the image, with the head to the east, be bathed as in Britar with an infusion of wavy-leaved fig, Pipal, glomerous fig, Siris and banyan, mixed with all sorts of auspiciously named plants, with sacrificial and other grass, with clay dug up by elephants and bulls from mountains, ant-hills, confluences, river-banks, and lotus-grown lakes joined to water from holy bathing places and the fine products of cows, the whole combined with scents and water containing gold and jewels. Let the bathing be performed amid the

क्रमादी तु नवश्वचपूजामाच चन्यवा पक्षदं पृंशां न कार्य जापते नवश्चपुरायं। स्वया

नवजवन कवा ततः वसं धनारसेत्। D. P. T., p. 645.

\* Quoted in S. K. D., loc. Pratishthd, p. 2543.

sounds of various musical instruments, solemn shouts, and the recital of the holy texts.

"Eminent Brahmins have to mutter prayers addressed to Indra in the east; prayers to Agni in the south-east; for doing which they ought to be honourably rewarded."

"Let the special priest make an offering also to fire, with prayers addressed to the god whose idol is being consecrated." 1

as in Bhavishya Purana;

81. The same ceremony of bathing is thus described in the Bhavishya Purána:— The god should be first bathed with the five descriptions of water, the five amritas, with the five products of the cow, with the five earths, with sesamum oil, other unguents and astringents, with the infusion of the five flowers or the three leaves. Details are then given of the technical meaning of most of the above, which need not detain us here, and the passage concludes thus:—"Then the Prána Pratishthá and the homa should be performed according to rule, and the priest's fee duly paid for the completion of the ceremony."

vivification and homa to follow.

Vivification ceremony.

82. It will be observed that Varáha Mihira is silent on the ceremony of the Prána Pratishthá or vivification which, according to the Bhavishya Purána, comes in between the bathing of the image and the performance of the homa. According to the Tantras, the incantation consists of certain mystic syllables followed by an invocation, asking for the vivification of particular organs of the image with the vital energies of the divinity whom the image represents, and the continuance of such energies for all time. According to the Vasishtha Samhita the incantation is to be performed by the worshipper touching

<sup>&</sup>lt;sup>1</sup> J. R. A. S., Vol. VI, N. S., p. 333, sls. 8, 9, 10, 11 and 12.

<sup>&</sup>lt;sup>2</sup> S. K. D<sub>t</sub>, loc. Pratishthá, pp. 2541-2545.

Saradá Kramadipiká (tilak),
 S. K. D., loc. Pratishthá, pp. 2542-2543.

<sup>\*</sup> Saradá Kramadipiká (tilak), S. K. D., loc. Pratishthá, p. 2513.

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the heart of the image, the heart being supposed to be the essential seat of life. The Káliká Purána, however, requires the cheeks of the image to be touched before touching the heart.

To return to Varáha Mihira, 2 we find him directing Setting up the image. that "when the image has been bathed, clad in a new garment, smartly adorned and honored with flowers and perfumes, let the person, whose function it is to set it up, put it on a nicely-spread bed.

"After the sleeping image has been consecrated with wakes, dancing, and song, they have to proceed to its setting up, at a period indicated by the astrologers.

"Let the image, worshipped with flowers and unguents, amid the sounds of horns and musical instruments, be led, with all precaution, round the shrine, in such a manner that the latter is always kept in the right side.

"Thereupon, make a copious oblation to treat Brahmins and fashionable people; and, after a piece of gold has been deposited in the cavity of a seat, let the image be placed upon the base.

"By particularly honouring the setter-up, astrologer, Brahmins, fashionable people, and carpenter, one shall inherit good things in this world, and heaven in the next."

"The priests of Vishnú are generally styled Bhagavatas; Practice of those of the Sun, Magi; of Siva, Ash-smeared priests; different sectes those of the Divine Mothers, are termed Adepts in the rites of the Mother's circle; those of Brahman, priests; the followers of the all-benevolent Saint (i.e., the Buddha) are known as Cakyas; those of the Jinas, as Naked These different priests have to perform, agreeably to the rule peculiar to each sect, the ceremony in order of the god of whom they are the devotees."

<sup>&</sup>lt;sup>2</sup> Saradá Kramadipiká (tilak), <sup>2</sup> Brihat Samhita. Adhy. 60, S. K. D., loc. Pratishthá, p. 2543. sls. 14-19. J. R. A. S., Vol. VI, N. S., p. 334,

Legal effects of Prana Pratishtha.

83. By this process of vivification the image from its previous status as an inanimate object, a simple piece of clay stone or metal, acquires the status of a judicial personage, capable of holding property. As observed by Mr. Justice Scott in his judgment in the Mandvi Temple case, Thackersey Dewraj v. Hurbhum Nursey (I. L. R., 8 Bom., p. 456), "the deity of the temple is considered in Hindu Law as sacred entity or ideal personality possessing proprietary rights."

Deity as a legal entity.

The Dákor Temple case.

Statement of facts.

It follows from this conception that a consecrated image cannot be the property of any particular person. The Dakor Temple case, Manohar Ganesh Tambekar v. Lakshmiram Gobindram (I. L. R., 12 Bom., p. 247) arose in connection with a temple situated at Dákor, dedicated to the god Shri Ranchod Ráiji. It was proved in the case that the deity in question was held in great veneration by the followers of the Vaishnava religion throughout Western India, and that the offerings made by the votaries at this shrine amounted each year to about a lakh of rupees in value. The existence of the deity could be traced back up to seven centuries, and the piety of reigning chiefs had from time to time added lands and villages to the property of the endowment. The throne of the deity had been lately covered with gold and silver by His Highness the Gaekwar at a cost of Rs. 1,25,000, and the present temple had been built by the ancestor of one of the plaintiffs at a cost of Rs. 1,00,000. The suit was instituted by the hereditary manager of the temple, descendant of the builder of the present temple, and by four other plaintiffs who were gors or priests residing in the same locality, whose duty it was to conduct the pilgrims, who were their Yajmáns, or patrons, to the shrine, and perform the worship of the deity on their behalf. "The defendants were a numerous body (about one hundred and

fifty in number) of sevaks, or ministers of the idol, succeeding to their offices by hereditary descent; they remained in constant attendance on the idol, performed the daily services, and kept in their custody all the cash, ornaments, clothes and other offerings dedicated to the deity. They were paid Rs. 150 a year out of the revenues of the foundation." From 1772, i.e., the time of the erection of the present temple, the management of the temple and its appendant villages had been carried on by the Tambekar family, and at the same time the sevaks had given an agreement in writing to the manager of the institution, by which the sevaks bound themselves to observe certain rules in the performance of the daily services at the temple and for the preservation of the offerings made to the idol.

"The plaint alleged that the defendants had frequently Plaint acted in contravention of the rules laid down in the aforesaid document, that they had latterly set up a proprietary title to the offerings made at the shrine, that they had appropriated part of those offerings to their own use, and that they refused to render an account of the property held by them in trust for the idol.

"The plaintiffs, therefore, prayed as follows:-

- "1. That an account might be taken, by and under the directions of the Court, of all sums of money, ornaments, cattle and all other moveable and immoveable property which had come into the hands of the defendants as trustees of the idol.
- "2. That the defendants might be ordered to pay into Court whatever, on taking accounts, might be found due by them to the funds of the temple.
- "3. That, if necessary, the defendants might be removed from their office of sevaks, or worshippers and new sevaks, or worshippers be appointed in their stead.

- "4. That a scheme might be settled by, and under the directions of, the Court for the management of the temple and of the funds thereof.
- "5. That an injunction might be issued restraining the defendants from removing, alienating, or otherwise disposing of the cash, clothes, ornaments and other moveable as well as immoveable property dedicated to Shri Ranchhod Ráiji.
- "6. That a receiver might be appointed to take charge of the said property of the idol.
- "7. That all books, papers, and documents relating to the said offerings and to the disposal thereof might be directed to be forthwith brought into the custody of the Court."

Written statement.

In their written statement the sevaks contended amongst other things that they "were not the servants of the temple but owners of the idol and its property; that as owners and proprietors they and their predecessors had carried on the management of the temple uninterruptedly for more than seven hundred years; that they had never rendered any account of their management to the plaintiff Manohar or his ancestors or to any other person; that the agreement of A.D. 1772 was not a genuine document, and even if its genuineness were established it was not binding on them; that they had appropriated to their use such offerings as it had been their practice to appropriate for hundreds of years past; that they were not trustees of the devasthán; that they had not abused any trust and were not liable to be removed from their office and position as sevaks; and that the plaintiffs had no right to demand an account of their management."

Appeal to .High Court.

The suit having been dismissed in the first Court on a preliminary point as to the right of the plaintiffs to institute the suit, without adjudicating upon the pleas of the sevaks defendants upon the merits, the case was carried by the plaintiffs in appeal to the Bombay High Court. That Court having decided the preliminary point in favor of the plaintiffs' right to bring that suit, was required to discuss the defence of the sevaks on the merits, and gave Judgment. the following judgment thereupon:-

"The defendants take the position that they, as a body, secake claim are the owners, for all secular purposes, of the idol, whom, and not in spiritual sense, they serve. The offerings made at the trustees. shrine, the cattle, and even the land presented by devotees are, they assert, their property free from any secular obligation, as none has ever in practice or in the intention of the donors been annexed to the gifts by which religious merit was sought and gained. They hold the property thus acquired, and have for centuries held it, as a sort of sacred guild, with hereditary succession to the several members. It is not held on any trust for the support of jurisdiction of ceremonies or with any obligation annexed to it that can be enforced in a secular Court. The duty of providing a regular worship for the deity is of a purely moral kind, which they discharge merely to satisfy their consciences, one the nature and limits of which have never been settled otherwise than by their own will and judgment."

They deny

After showing that the plaintiffs, though not trustees, Locus standi had yet an undeniable locus standi as relators, and the of plaintiffs. suit, if maintainable, might proceed at their instance, the judgment proceeds thus :—

"There is no difficulty in conceiving the existence of a A society for society having property and receiving gifts from its own possible, members or from strangers, which it then disposes of simply for its own benefit or at its own discretion. guilds and companies in manufacturing and trading cities held, and still hold, estates without the attendant obligations of a charitable trust. The property is their own,

distributable amongst members or at the pleasure of the governing body of the society, not held for the benefit of any class outside the society, or for the promotion of any purpose of recognised public utility. The latter characteristic is essential to a public charity, but in its absence there may be a corporation existing by royal grant, prescription or legal allowance, holding property for other than charitable purposes. Whether the association exists for charitable purposes or not, it cannot, according to English law, without incorporation in some shape, become vested with property as a mere fluctuating and undefined aggregate.—Goodman v. Mayor of Saltash. 1 If its purposes are such as are contemplated by section 26 of the Indian Joint Stock Companies' Act, VI of 1882, the society may get itself constituted accordingly under the Act. 1882, otherwise wise, though the individual members may have certain rights and privileges as members of a class or answering to a certain designation, these advantages must be realized, as against the world at large, through the proprietary or quasiproprietary right of some other person or corporation.

der Act VI of a juridical erson necesary.

but under English Law,

property.

It may be constituted un-

corporation

necessary for vesting of

> "The defendants in the present case put themselves forward, not merely as entitled to the enjoyment of particular benefits to be taken by them individually as members of a class, but as a body of proprietors holding a small estate, in the shape of immoveable property, but a much larger one in the form of the accumulated offerings of articles of value laid at the feet of the idol and of the revenue arising from this source. The questions are whether they can and do take this property and this revenue absolutely as their own without any trust or annexed duty, and whether, if they enjoy by a kind of agency or representation of the idol conceived as a personality, they fulfil the duty they owe to this ideal person in merely revelling on the grow-

Questions for decision.

<sup>&</sup>lt;sup>1</sup> L. R., 7 A. P. Cas., 633, at p. 648.

ing revenues, or are bound to widen the range of the deity's beneficence in proportion to the expansion of his mundane means.

"As to the jurisdiction of the Civil Courts in matters Jurisdiction of this kind, it is too late now to raise any contention. and permitted Under the native system of government, though it was by Hindu law. looked on as a heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses (W. & B., H. L., 202,817), yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments. It was quite in accordance with the legal consciousness of the people that the Bombay Regulation XVII of 1827 gave to the Collector a visitatorial power enabling him to enforce an honest and proper administration of religious endowments. The connection of the Government in its Executive executive capacity with Hindu and Mahomedan founda-control of endowments tions was brought to an end for Bombay by Bombay Act VII of 1863 and for Bengal and Madras by Act XX of 1863. But the existence of sacred property and of the rights and obligations connected with it as objects of the but their jurisdiction of the Civil Courts is recognised by the laws existence recognised. just referred to. In the southern part of the Bombay Presidency, dedicated estates are expressly made inalignable by Bombay Act II of 1863, section 8. Questions Necessity of arising under these laws between individuals with ref-Civil Courts' arising under these laws between individuals with ref-Civil Courts' erence to proprietary and pecuniary rights and as to alleged misappropriations and defalcations must necessarily be dealt with by the Civil Courts, which only can bring the requisite sanctions to bear on the enforcement of an honest discharge of their duty by the holders of dedicated estates. The mere incidental cognisance of a religious or caste question, the recognition of the settlement of such a question by the competent authority, is

involved in the exercise of this jurisdiction, and does not

stand in the way of it.—Krishnasami Chetti v. Virasami Chetti.1 It is recognised by the indigenous customary law that an affair in which the castes could not or would not give relief is a proper subject of adjudication by the ordinary Civil Courts.<sup>2</sup> The cases in which Hindu foundations and charitable (including religious) trusts have been enforced and the person connected with them made accountable by the Civil Courts are too numerous to mention. Reference may be made to Maharanee Shibessouree Debia v. Mothooranath Acharjo; Mohunt Burm Suroop Dass v. Khashee Jha; Jaggodumba Dossee v. Puddomoney Dossee; 5 Dhurrum Singh v. Kissen Singh. 6 If, then, there is, in the present case, a public purpose, for the fulfilment of which, a class of persons, for whose benefit, in a way admitted by the State as deserving protection, the property of the Dákor temple is held, and its revenues are received by the defendants, the defendants become by these mere circumstances amenable to the jurisdiction we are now called on to exercise. The religion of the Hindu population being jurally allowed, the duties and services connected with it must be deemed objects of public concern, and at least as to their physical and secular elements enforceable

trustees "for public charitable purposes" within meaning of s. 539, C. P. C.

Cases where jurisdiction

was exercised.

Votaries interested in the proper application of offerings. The evidence recorded in this case, including that of many donors to the idol Shri Ranchhod Ráiji, shows that having discharged a religious duty or gained religious merit by a gift to the deity, the votary is but little interested in what afterwards becomes of the offering.<sup>7</sup>

like other obligations.

<sup>&</sup>lt;sup>1</sup> I. L. R., 10 Mad., 133, 144; W. & B., H. L., 599 n.

West and Bühler, H. L., p. 1007 n (c); Steele, L. C., 185, 186, and 267.

<sup>&</sup>lt;sup>8</sup> 13 Moore's I. A., 270.

<sup>4 20</sup> Calc. W. R., Civ. Rul., 471.

<sup>&</sup>lt;sup>5</sup> 15 Beng. L. R., 318.

<sup>6</sup> I. L. R., 7 Calc., 767.

West and Bühler, H. L., pp. 197, 411. Vya May, chap. IV, s. 1, p. 8.

Still he must needs be and is concerned in the maintenance of a decent and orderly worship. He is interested, too, in honour and respect of the deity he reveres. He does not attend to pander to unrestricted licentiousness or mere ignorant sensuality which must bring his deity and its worship into contempt. He desires a regular and continuous or, at least, a periodical round of sacred ceremonies, which might fail if the offering of past years were all squandered while those of any given years fell short. The sevaks seem to have received the offerings both of Sevak's liaimmoveables and of moveables with a consciousness, bility as trustee. though but a hazy consciousness, that they were bound, out of the funds thus coming to them, to provide for the worship of the idol, and the convenience of the pilgrims, who resort to the temple."

Then, after discussing certain items of evidence adduced in the case, the judgment proceeds:-

"The Hindu law, like the Roman law and those derived Corporate from it, recognizes, not only corporate bodies with rights bodies and foundations of property vested in the corporation apart from its recognised by individual members, but also the judicial persons or subjects called foundations.1 A Hindu, who wishes to Trust not establish a religious or charitable institution, may, accord- Hindu reliing to his law, express his purpose and endow it,2 and gious or chartthe rules will give effect to the bounty, and at least ments. protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality.8 A trust is not required for this purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity A comparison of the English law. In early times a gift placed, as English law.

<sup>&</sup>lt;sup>1</sup> West and Bühler, H. L., pp. 201, 185, 553, 555.

<sup>&</sup>lt;sup>3</sup> West and Bühler, H. L., pp. 99, 197, 216.

West and Bühler, H. L., p. 33; Manu VIII, 41; Coleb. Dig., B. III, chap. II, T. 28.

Spence Eq. Juris., p. 440; Sav. Syst, s. 88, .

it was expressed, "on the altar of God" sufficed to convey to the Church the lands thus dedicated. Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities.2 After Christianity had become the religion of the empire, dedications for particular churches or for the foundations of churches and of religious and charitable institutions were much encouraged.3 The officials of the Church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses, but the immediate beneficiary was conceived as a personified realization of the Church, hospital, or fund for ransoming prisoners from captivity.5 Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts and by furnishing an ideal centre for an institution to which necessary human attributes are ascribed -Dhadphate v. Gurav (I. L. R., 6 Bom. 122)-it makes the application of the rules of law easy as in the case of an infant or a lunatic.6 Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed extra commercium,7 with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes.8 Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Ráiji. This restriction is like the one by which the Emperor forbade the aliena-

An example from mercantile practice.

Nature of property dedicated to idol.

<sup>&</sup>lt;sup>1</sup> See Elton's Ten. of Kent, 17, 18.

<sup>&</sup>lt;sup>9</sup> W.&B.&H.L.,p. 185 (*l*) Ulpian Fr., XXII, s. 6. They were thus placed *extra commercium*, Sav. Syst, sec. 88 (cc).

Sav. Syst, sec. 88; compare
 W. & B, p. 197.

<sup>4</sup> Sav. Syst, sec. 88.

<sup>•</sup> Sav. Syst, sec. 88. .

<sup>•</sup> Sav. Syst, sec. 90. Comp. Kinlock v. Secretary of State for India in Council, L. R., 15 Ch. Div., at p. 8.

**<sup>7</sup>** W. & B., H. L., pp. 185, 197.

See Cod Lib., I. T., 2 Fr., 21
 W. & B., H. L., pp. 555, 557. See also Rupa Jagset v. Krishnaji Govind, I. L. R., 9 Bom., p. 169.

tion of dedicated lands under any circumstances.1 It is Proprietary consistent with the grants having been made to the juridical the idol and person symbolized or personified in the idol at Dakor. It not in the is not consistent with the juridical persons being conceived as a mere slave or property of the sevaks whose very title implies not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Ráiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as Sevake reof the other kind of property incur thereby a responsibi-trustees. lity for its due application to the purposes of the foundation. (Compare Griffin v. Griffin; Mulhallen v. Marum; Marum; Aberdeen Town Council v. Aberdeen University.4) They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought against them for maladministration by a suit open to Remedy any one interested, as under the Roman system in a like against maladany one interested, as under the Roman system in a like ministration. case by means of popolaries actio." "The witness Shivlal (Exhibit 157) says, the sevaks take all the offerings, but still, 'as representative of the deity.' Jamnadas (Exhibit 197), a bountiful donor to the temple, says, the offerings are made to the god, though the sevaks Sevaks not divide them at their discretion. This is what the sevaks owners of idol as a juridical

would naturally do, even as managers, unless called to person.

<sup>&</sup>lt;sup>1</sup> Vyav. May, Chap. IV, s. VII, p. 23; Nov. 120, Cap. 10.

<sup>&</sup>lt;sup>9</sup> 1 Sch. & Lef., 352.

<sup>\* 3</sup> Dr. & War., 317.

<sup>&</sup>lt;sup>4</sup> L. R., 2 Ap. Cas., 544.

<sup>&</sup>lt;sup>6</sup> Compare Indian Trusts Act II of 1882, ss. 88, 95.

account by some superior authority. It by no means necessitates the conclusion that they are and have always been owners of the idol as a juridical person.—Juggodumba Dossee v. Paddomoney Dosseel. They are a numerous body, about one hundred and fifty in number, succeeding to their offices by hereditary descent. It is admitted that they are entitled to a fair provision for their needs and to maintain the service of the temple. For a period excluding over several centuries the revenues of the temple seem to have but slightly, if at all, exceeded the outlay required to maintain its services, but recently these revenues have very largely increased. The law which protects the foundation against external violence guards it also internally against maladministration, and regulates, conformably to the central principle of the institution, the use of its augmented funds. It is only as subject to this control in the general interest of the community that the State through The dominant the Law Courts recognizes a merely artificial person.<sup>2</sup> guards property and rights as devoted, and thus belonging. so to speak, to a particular allowed purpose only on a condition of basing the application when either the purpose has become impracticable, useless or pernicious, or the funds have augmented in an extraordinary measure. This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern Codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtedly recognizes artificial juridical persons, such as the institution at Dákor, and could not, any more than any other law, support a foundation merely as a means of squandering in waste or

Summary.

•( •

The external and internal

control of the

Sovereign, in the interest

of the public.

protective character of

law.

The judgment which I have thus read may take rank as a leading case on the subject, and as I shall have

profligacy the funds dedicated by the devout to pious uses."

<sup>&</sup>lt;sup>1</sup> 15 Beng. L. R., 318.

<sup>\*</sup> See Sav. Syst., sec. 89.

occasion often to refer to it, I think it is convenient that you should be familiar with it as a whole. For our present purposes you will have observed that it is distinct authority for the juridical existence of the idol as a legal entity—a person who is capable of receiving property and exercising the rights incident thereto—a proprietor, who never dies, and about whom consequently no rules of inheritance need be discussed, but one nevertheless labouring under physical disabilities which render it necessary that his interests should be looked after primarily by a worshipper subject to the eventual control of the ruling power.

The books of ritual contain a direction that before The Utsarga. removing the image into the temple, the building itself should be formally given away to the god for whom it is intended. The sankalpa, or formula of resolve, makes the deity himself the recipient of the gift which, as in the case of other gifts, has to be made by the donor taking in his hands water, I sesamum, the sacred kusa grass, and the It is this ceremony which divests the proprietorship Its legal effect. of the temple from the builder and vests it in the image which, by the process of vivification, has acquired existence as a juridical personage. Vijnaneshwara in the Mitakshara, 2 says that "gift consists in the relinquishment of one's own right, and the creation of the right of another, and the creation of another's right is completed on that other's acceptance of the gift, but not otherwise. Accept-Gift is comance is made by three means,—mental, verbal, or corporeal. acceptance. Mental acceptance is the determination to appropriate; verbal acceptance is the utterance of the expression,—this is mine, or the like; corporeal acceptance is manifold, as by

All dánas or gifts are enjoined by Kamalakara to be bestowed in water, "and where there can be no recipient as in the case of Mathas for Sanyásins, the offering

water is thrown into a pot of

<sup>&</sup>lt;sup>2</sup> Quoted in Mayne's Hindu Law and Usage, para. 351, p. 404; Macnaughten's Mitakshara, p. 78,

Acceptance by idol. touching." In the case under consideration the *utsarga* is the relinquishment of the donor's right, and the gift is completed by the acceptance corporeally made by the donee,—the image,—which is made to take bodily possession of the premises. Compare ceremony of renunciation in case of Tanks and Wells (Chapter VIII, *Lecture X*).

Concluding ceremonies.

87. After the installation of the image in the temple, the rituals prescribe the performance of the árati or lustration ceremony to conclude with a feast to the Brahmins, whose numbers according to the Matsya Purana range from one thousand to twenty according to the means of the worshipper. The ceremony, concludes with gifts to the poor,—a general festival of dancing and music. 8

Subsequent duties: daily worship.

88. The deity so established has to be worshipped daily. According to the Mahá Kapila Pancharátra, if the worship is neglected for one day, it should be doubled on the next; if the worship has been neglected for three nights, then a Mahá Pujá or worship on a grand scale should be performed; for a neglect of worship for a longer period the ceremony of samprokshana or sprinkling is enjoined. If the worship has been discontinued for more than a month, some ordain the sprinkling ceremony, and others ordain the repetition of the installation ceremony (pratishthá). The sprinkling (samprokshana) ceremony includes washing the image with the liquid productions of the cow, and with kusa water, and the repetition of the Prana Pratishtha or vivification ceremony.

Repurification in case of cessation;

89. In case of the image being defiled by the touch of any impure substance, Baudháyana directs, firstly, the purification appropriate to the material of which the image is composed, and a subsequent repetition of the

in case of image being defiled.

S. K. D., loc. Matha, p. 3169.
 S. K. D., loc. Pratisthá, p. 2545.

S. K. D., loc. Matha, p. 3169.
 S. K. D., loc. Pratisthá, p. 2545.

installation (pratishthá) ceremony, when it becomes again a fit object for worship. According to the Aditya Purána, the gods cease to reside in images which are mutilated; broken, burnt; deprived of ornaments, or of vehicles; touched by beasts; fallen in a contaminated place: worshipped by the mantras of another god; and defiled by the touch of an outcaste. The Brihan-Naradiya Purána<sup>2</sup> declares that women, Sudras, and those uninvested with the sacred cord, have no right to touch images of Vishnú or Siva.3 The person who salutes the lingam, or the image of Vishnú, which has been touched by a Sudra or the like, suffers endless torments in after-life. The horror displayed towards the worship by other sects is more fully described in the Padma Purána :- "The installation of Vishnú and the like should not be performed by Sáktas; such works when so done are not acceptable to Vishnú."

The Shastras of the Hindus are assiduous in incul- Maintenance cating the necessity of maintaining and repairing the and preserving the tion of pious pious works established by previous generations. ing to the Vishnú Dharma, the kingdom where temples decay suffers a proportionate decline, and the merit of repairing an old temple is certainly double that of the original builder. According to the Vishnú Rahasya,6 the person who rebuilds a fallen temple, or repairs one about to fall, attains the abode of Vishnú. It is said in the Agni Purána that the person who re-erects a temple of Vishnú, which has fallen down, or is about to fall down, or is half broken, obtains double the merit of the original In later times the reward has been greatly Thus the Devi Purána recites that the reward increased.

S. K. D., loc. Pratishthá. S. K. D. loc. Mandiram. р. 3273. рр. 2545-46.

ditto, p. 2546. Ditto

Ditto ditto. ditto, p. 2542. Ditto ditto, p. 3274. · Ditto

ditto, p. 2537. Ditto

of the repairer of old (temples) is hundred-fold that of the original builder; hence a man should take every care to repair old temples; and in the *Hayasirsha Pancharátra* the same reward is promised to the repairers of old temples and images. The same promise is held out by the sage *Yama* in his *Smriti Samhita*, sl. 70. Manu, in Chapter IX, sls. 280 and 285, lays down the punishment to be inflicted by the King on those who break open divine temples or break divine images; and in the *Matsya Sukta* the former class is threatened in after-life with punishment in the shape of being transformed into a particular tree.

Image worship, a daily duty of Brahmins.

91. The worship of the gods is one of the daily duties of a Brahmin enjoined by Parásara, and Manu (II, 176) describes the following as part of the duties of a religious student,—Brahmachári:—

"Day by day, having bathed and being purified, let him offer fresh water to the gods, the sages, and the manes; let him shew respect to the images of the deities, and bring wood for the oblation to fire." The duty, so far as the householder is concerned, is laid down by Manu in Chapter IV, sl. 56, where the adoration of the gods is enumerated amongst the duties to be performed at the beginning of each day.

Respect due to images.

92. According to the same sage, the shadow of a divine image should not be trodden upon (IV, 130), and in passing by the same they should be honored by always keeping them to the right side (IV, 39); and the same injunction is enjoined as to temples by Gautama in his *Dharma Sutra* (IX, 66). Manu directs temples dedicated to the gods to be erected on common limits (VIII, 248), and he also directs in connection with the duties of a king that "having conquered a country, let him respect the deities adored in it and their virtuous priests" (VIII, 201). The

<sup>&</sup>lt;sup>1</sup> Institutes, I, 38.

uncovering of the feet being undoubtedly one of the old established ways of shewing respect to a superior, we are not surprised at the injunction of Atri 1 that gods should not be worshipped with covered feet, or at the similar direction of Angirá that in approaching deities shoes should be discarded.

When an idol has once been consecrated by ap-Legal effect of propriate ceremonies, the deity of which the idol is the visible image resides in it, and not in any substituted image. This principle was laid down by a ruling of the Calcutta High Court in the case of Doorga Proshad Dass, plaintiff-appellant, v. Sheo Proshad Pandah, defendant-respondent (7 Calcutta Law Reports, p. 278). The plaintiff sued to recover certain land alleged to be dewuttor and dedicated to a family idel named Sree Russick Roy Jeo, which had been alienated together with the idol by his father, and purchased by the defendant. He did not sue to recover the idol. The case, on coming up before the High Court, the Court doubted the reality of the alleged dedication to the idol; was not satisfied that the plaintiff was entitled to sue as a sebait; and was doubtful whether he was suing bond fide for the benefit of the idol, or simply in order to get back the property into the possession of the family. The case was consequently remanded to the lower Courts for deciding the questions which were all eventually decided in favour of the plaintiff. At the trial after remand, new points were raised. defendant No. 2 had bought not only the property in dispute, but the idol, and his defence was that he was duly carrying on the worship of the idol from the profit of the property. The plaintiff did not seek to recover the idol, but pretended that the idol was still in his possession, and that the defendant had acquired only a

<sup>&</sup>lt;sup>1</sup> Atri Samhita, sls. 321-322.

specious idol. It was, however found, that the idol was really in the defendant's possession. But the lower Court held that, although this was so, and although plaintiff was not seeking to recover it, he could still recover the land without the idol, and there was nothing in the Hindu religion to prevent the plaintiff from replacing the idol by a new one as in the case of breakage or loss.

The deity resides in consecrated image which cannot be substituted.

The High Court held such decision to be wrong. Macdonell and Tottenham, JJ., in their judgment, observe: "We believe that, according to Hindu notions, when an idol has once been, so to say, consecrated by the appropriate ceremony performed, and Mantra pronounced, the deity, of which the idol is the visible image, resides in it, and not in any substituted image, and the idol, so spiritualised, becomes what has been termed a juridical It does not by any means follow that, because the idol now in question has passed into the possession of the defendant, together with the property dedicated to it, it has thereby fallen into the condition of a lost or broken idol which, by Hindu law, may be replaced. question appears to us not to be, as understood by the Judge, whether the idol is lost to the plaintiff; but whether as the seat of the deity, it has ceased to exist. rate, so far as we know, there is at present no other idol, -Sri Russick Roy Jeo, -and the land in dispute was certainly dedicated to this one which is in possession of The effect, therefore, of a decree in the defendant. plaintiff's favour for the land without his idol would be to sever the one from the other. We think, therefore, that plaintiffs are not entitled to recover the land in the present suit, and that it ought to have been dismissed in the first Court."

Property follows the image.

## CHAPTER V.

## (Lecture V.)

On Endowments for the Service of Images.

THE WORSHIP: discontinued in case of gift images, 1; daily service of consecrated images:-Sweeping the Temple, 2; smearing, 3; removing the nirmálya and presenting fresh offerings, 4. Persons unable or incapable to worship may appoint Brahmins, 5 .- PERPE-TUATION OF WORSHIP BY ENDOWMENT: Religious merit acquired by gift of land, 6. Assent of State not necessary for endowment (Juggut Mohini Dossee v. Sokhumoney Dossee), 7. EVIDENCE OF ENDOWMENT: the mode of dedication, gift to idol or to sebait as his representative, 8; grant by deed usual, where dedicator himself sebait, ib.: documentary evidence not absolutely necessary, 9; use of land-proceeds for idol-service not proof of dedication, ib.; but may corroborate original grant (Muddun Lall v. Komal Bibee), ib.; documentary evidence very necessary to prove actual dedication (Soshikishore Bundopodhya v. Rani Chooramoney Putto Mahadeb), ib.; evidence must be strong and clear, ib.; presumption from the conduct of parties (Kunwar Durga Nath Roy v. Ram Churn Sen), ib. Service of idols only a moral duty where no direct endowment (Sham Lat Sen v. Huro Soonduree Gupta), 10. Remission of Government revenue not conclusive evidence of the land's present dewuttor character, 11; Nimaye Churn Puteetundeev. Jogendro Nath Banerjee, ib.; purchasing property in the name of an idol not endowment (Maharani Brajasoondari Debya v. Rani Luchmi Kumari), 12. Effects of Endow-MENT: Limited powers of sebait as of manager or trustee (Maharanee Shibessouree Debya v. Mathuranath Acharjo), 13; Prasannamayi Dassi v. Koonja Behari Chowdhury, 14; Prasunna Kumari Debya v. Golab Chand Babu; Idol's estate not ordinarily alienable, 15; but loans for necessary purposes valid, 16; Decree on a sebait if properly obtained binding on his successor, 17. Apparent authority for idol's estate not being sold in execution, rents and profits only being sequestered, 18. Grant of a mokurrari lease and sale of part of the mokurrari rent by a sebait allowable for a necessary purpose (Kunwar Durga Nath Roy v. Ram Churn Sen,) 19.

1. I explained in the preceding lecture how, under Hindu legal conceptions, a consecrated image established for worship could not be the property of any particular Gift images.

person or persons. A distinction has to be drawn in the case of images which are given away as gifts with particular objects. The subject is treated under the heading of Devatádána by Hemádri in the eleventh chapter of the Dánakhanda of his encyclopædic work, Chaturvarga Chintamani. The image of a particular deity is prepared of particular materials, mostly valuable; the preliminary processes in a pratishthá, like the erection of a mandapa and the performance of the adhivása are observed; the worship of the deity concerned is then gone through with appropriate texts, and the image itself made over as a gift to qualified Brahmins for the purpose of propitiating that deity and thereby procuring a release from specified diseases or infirmities. Apparently, the image so given away is not to be retained by the donee for purposes of worship, but is to be broken up and utilised for its component materials. The sanctity of the image in this particular case is temporary, and not permanent, it does not become a juridical person, possessed of proprietary rights, but is given away expressly as a chattel, which upon such gift becomes the absolute property of the donee. to be dealt with by him at his own will and pleasure free from any trusts for worship; and is indeed in the majority of cases devoted to immediate destruction, consigned to the melting pot for the purpose of realising a moneyvalue.

Property of the donee.

Not for wor-

ship.

Daily service:

2. To return to the normal type of consecrated image for continued worship. We have followed its history up to its being installed in its own temple and honored with daily worship. The worshipper is directed to awake early in the morning and to purify himself. He is then to sweep the temple with a piece of cloth or with a broom made of specified materials. Atri 2 in his Smriti Samhita

(a) Sweeping the temple;

<sup>·</sup> प्राणतोषिणी, p. 183.

<sup>&</sup>lt;sup>2</sup> Sloka 317.

declares the contact of ordinary sweepings to be destructive of all punya (religious merit) acquired during the day, but an exception is made in the case of temple-sweepings; <sup>1</sup> one covered with them being declared to be as holy as one bathed in the waters of the Ganges. In the Yogini-Tantra <sup>2</sup> the devotee is promised spiritual bliss for a thousand years for every particle of dust raised by the sweeping.

- 3. After sweeping comes the process of smearing (b) Smearing; (upalepana). This, according to the same authority, has to be done with earth and cow-dung, and here, again, in the hyperbolic language common to this class of works, a reward of a thousand years' spiritual bliss is promised for every drop of water used in the smearing process.
- The next step is to remove the nirmalya, or the (c) Removing remains of the previous day's offerings of flowers, &c. 8 text declares the non-removal of the nirmálya to be as destructive of religious merit as the confinement of a thirsty animal or the menstruation of an unmarried daughter. According to the Mantra Tantra Prakásha,4 the devotee, after removing the remains of the previous day's offerings, should present the deity with an offering (d) Offerings. of flowers; of arghya, or a respectful oblation of rice, durvá grass, flowers, &c., with water; of pádya, or water, for washing the feet; as also of other articles necessary for washing the mouth, and so on. The deity, in short, is conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through; the living image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of food and the retirement to rest.

<sup>&</sup>lt;sup>1</sup> Sloka 316.

<sup>&</sup>lt;sup>8</sup> प्राणतोषिणी, p. 183.

<sup>॰</sup> प्रापतोषिषी, p. 183.

<sup>4</sup> प्राण्ताषिषी, p. 183.

Who can wor-

5. Great as is the religious merit of personally performing these services for the deity, the endower has not always the inclination or the capacity to perform them. Apart from the question of physical capacity there is that of religious capacity. Thus it is said in the Vrihan-Naradiya Purána, 1 "Women; those uninvested with the sacred thread, i.e. (the members of the dvija class before the initiation ceremony has been performed for them); and Sudras are not competent to touch images of Vishnu or Siva. A Sudra, one uninvested with the sacred thread, a woman or an outcaste, having touched Vishnu or Siva, goes to hell." In the Padma Purána and other treatises such incapacitated persons are directed to have the worship performed through Brahmins.

6. A person having established an idol in a temple would

Reasons for endowments.

Merits of gift of land.

of the worship. In ancient times rights in land were the only permanent rights known to the people. The gift of land is extolled in the Shastras as productive of the greatest religious merit. In the Mahabharata,<sup>8</sup> it is said among other things, that the donor of land shines in heaven so long as the land, which is the subject of gift, lasts, as the moon increases day by day, so does the religious merit of a gift of land increase with each succeeding crop. <sup>4</sup> The permanence of the benefit conferred is no doubt the principal reason for the high position which the Shastras accord to the gift of land as a source of religious merit. Ordinarily, the gift contemplated is the gift of land to pious Brahmins in their own right as brahmottar, but special rewards are also promised for the gift of lands to the gods (devottar).

naturally be anxious to devise means for the perpetuation

Brahmottar and Devottar or Dewuttor.

Thus in the Vishnu Dharmottara 5 it is said that the donor

<sup>।</sup> प्राचनोषिषी, p. 401. \* Hemádri, Danakhanda, p. 495.

of land for the erection of a temple attains the abode of the particular deity to whom the temple is dedicated. Siva Dharma 1 it is declared that he who dedicates to Siva cultivated land, dwells in bliss in the Rudra loka for as many kalpas as there are (dandas) poles of land found on measurement. In the Varáha Purána, 2 the bestower of a skin of land to Vishnu is promised fortune and prosperity for seven births, and it is also mentioned there that he who dedicates a field or a house for the enjoyment of Vishnu is released from all his sins. Bhavishya Purána <sup>8</sup> similarly treats of the benefits to be derived from dedicating lands to Surya.

For all these reasons the gift of lands to temples has been always a favourite form of endowment with the Hindus. The Hindu proprietor is absolutely free to A Hindu's dedicate his property to the service of his deity, and the endow. assent of the ruling power is not necessary to confer validity upon the dedication. In the case of Juggut Mohini Dossee v. Sokheemoney Dossee, 4 it was argued by the appellants before the Privy Council, that certain instruments dedicating certain lands for the worship of the family idols required the assent of the State, and that in the absence of such assent those instruments were to be regarded as merely revocable appropriations, of which the founders might vary the use. The Judicial Committee of Assent of State the Privy Council, however, remarked: "No authority whatever was adduced in support of this position, which strikes at the root of most modern endowments of the like nature. A family trust of this nature has never in modern times, at least, been held to require such an assent. The cases supporting such trusts are too numerous for citation."

<sup>&</sup>lt;sup>1</sup> Hemádri, Danakhanda, p. 508.

<sup>\*</sup> Hemádri, Danakhanda, p. 510.

<sup>&</sup>lt;sup>9</sup> Hemádri, Danakhanda, p. 510.

<sup>4 14</sup> M. I. A., p. 302.

Evidence of endowment: Mode of dedication.

Documentary evidence not absolutely necessary.

Muddun Lall v. Komul Bibee.

8. The mode of dedication of land for the service of the deity would be the same as in the case of the temple. If the deity had a separate sebait the gift would be made into the hands of such sebait as the representative of the deity and possession by the latter would be the completion of the gift. If, however, as is generally the case, the dedicator of land is himself the sebait, he would follow up the religious ceremony by executing a deed of dedication in the name of the deity, and, so far as practicable, indicating by his future conduct and dealing the change in the ownership. "Documentary evidence is not absolutely necessary to prove an endowment. The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose, but where there is apparently good evidence going back for more than half-a-century that the land was so given, proof that from that time the proceeds had been so expended would be strong corroboration of the original grant-Muddun Lall v. Komul Bibee. 1 In this case, the Principal Sudder Ameen in holding that the land in suit was not endowed land seems to have relied upon the following marginal note in the case of Mahomed Noorbuksh v. Budun Chund Bibee alias Azezoonnissa, 2:-" Property not recognized as wukf without documentary proof." Glover, J., in commenting on this observed: "The marginal note in that case does, no doubt, lay down the law that endowments can only be proved by documentary evidence, but there is no mention of this dictum in the body of the decision, and we are not aware of any ruling of this Court which makes documentary proof a sine qua non. In the great majority of cases, it would, of course, be looked for, but its absence

would not necessarily put the party suing under an endowment out of Court."

Documentary evidence is, however, very necessary Documentary to prove an actual dedication. Thus it has been held that necessary. the mere fact of the proceeds of a piece of land having been appropriated for the worship of an idol, does not constitute it an endowed property; but the fact of the assignment to the idol must be specifically proved, Narain Prosad Myti v. Ruder Narain Myte 1; and in the case of Soshikishore Bundopodhya and others v. Ranee Chooramoney Putto Moha-debi and others, 8 the learned Judges dwelt upon the necessity of enquiring as to whether the land in dispute which was being claimed as dewuttor had been publicly assigned as dewuttor.

It has been held in Ram Pershad Doss Adhikari and Mere use of others v. Sreehuree Doss Adikaree and others, that the mere not evidence. fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol is no proof of an endowment; and the nature of the evidence necessary to prove an Nature of eviactual dedication is very clearly indicated in the following dence wanted. observations of the Privy Council in the case of Konwur Doorganath Roy v. Ram Chunder Sen and others 4:-

"If that document (Deed of Endowment) is out of the case, there is very slight evidence indeed of any such endowment. The case then rests, independently of the admissions in the deeds, upon the evidence of the dewan and mookhtear and one or two other witnesses that the rents of this mehal Gopejan were applied to the worship of this idol. But that evidence is extremely vague and The mookhtear says in several places that the

<sup>&</sup>lt;sup>2</sup> 2 Hay., p. 490.

W. R., Gap No., Civil Rulings, p. 107.

<sup>&</sup>lt;sup>8</sup> 18 W. R., p. 399.

<sup>4</sup> My P. C. J., Vol. III, pp. 684-5; 4 Cowell's I. A., p. 52.

rents were applied to the worship of the idols, and it is plain from all the evidence in the case that there were several idols belonging to this family, and no doubt the rents of some of the family mehals were applied to sustain their temples and worship. But supposing it to be taken that the rents of this mehal were applied during the period the witnesses speak of, to the worship of the idol Radhamohun, that fact is by no means sufficient to establish the onus which lies upon a party who sets up the case that property has been inalienably conferred upon an idol to sustain its worship. strong and clear evidence of such an endowment ought to exist. In the present case there is no proof that priests were appointed. If any had been appointed, they might have been called. There is no production of accounts shewing that the rents were separately collected and applied for the worship of this idol. For anything that appears, the rents may have gone into the general body of the accounts relating to the estates of this family, and there is really no document whatever upon which the finger can be placed to shew that an endowment was made, other than that rubicari to which reference has already been made.

Presumptions from the con-

"Besides the weakness of the proof of endowment on the duct of parties. part of the plaintiff, strong presumptions, that there was none, arise from other facts and circumstances in the case. It is said that the application of the rents of this particular mehal for a certain period to this idol is some evidence that the family were aware that the rents were properly and by right so to be devoted; but if the conduct of the family is to be regarded, there is, on the other side, the strongest indication, from what occurred in the suit brought by Bhagiruthi, the widow of the eldest brother of Bijoy, that the family understood that there was

That suit was brought by Bhagino such endowment. ruthi to recover from Rashmoni one-third of the mehal in question. She did not claim it as property to which she was entitled as joint sebait, but she claimed it as one-third of the family estate to which she, as widow of one of the brothers, was entitled. That is her claim. Rashmoni does not set up as a defence that the mehal was dewuttor property devoted to this idol; that she was the sebait, and entitled, at all events, to the possession and the management of it—she sets up no case of that sort—but allows a decree to be passed against her in favour of Bhagiruthi to recover one-third of the mehal, and in that decree the property is described, not as dewuttor, but as brahmottar property.

"Now, if this mehal had been really dedicated to the idol, it would no longer have been a partible estate. Rashmoni would, as sebait, have been entitled to the possession of it, and to the management and disposition of the revenues; and all that Bhagiruthi could have been entitled to would have been a share in the surplus revenues, if there should have been a surplus, after due provisions have been made for the worship of the idol.

"Therefore there is not only weakness of proof on the part of the plaintiff, but a very strong presumption, arising from the conduct of the parties in the suit in question, that this was not dewuttor property such as is alleged to be on the part of the plaintiff."

It was decided in the case of Sham Lal Set v. Nature of obli-Huro Soonduree Goopta and others, that when there no direct had been no direct endowment to support the worship of endowment. the family idol, although a moral obligation might be created by Hindu usage and custom, such moral obligation would not have any legal operation.

<sup>&</sup>lt;sup>1</sup> 5 W. R., p. 29.

The mere fact of land having been released by Government as appropriated to the services of an idol does not impose upon it the character of a religious endowment, and is not conclusive evidence of its present dewuttor character as against creditors. This was decided in connection with the Kalighat land in the case of Nimaye Churn Puteetundee v. Jogendro Nath Banerjee. 1

Nimaye Churn Puteetundee v Banerjee.

In this case, the appellant, the decree-holder, in execu-Jog-ndro Nath tion, attached certain lands possessed by the judgmentdebtors. The latter objected that the lands were not their property but held by them as schaits of a religious endowment. The Munsiff found that, although the land formed part of some which has been released by Government as appropriated to religious purposes, they were held by defendants entirely to their own use and dealt with them at their pleasure. They were in that way quite distinct from the lands definitely held for and devoted to the service of the idol. The objection, therefore, was overruled by the The District Judge, however, in appeal, held: Munsiff. "The mere misconduct of and fraudulent misappropriation of the proceeds by the priest or other person cannot affect the matter and render it liable to sale." The Court could not treat the lands as private property. The High Court in appeal (Jackson and Ainslie, JJ.), in setting aside the judgment of the District Judge, remarked: "We cannot admit that the fact of the land having been released for that reason imposes upon it a character of religious endowment so as to exempt it permanently from being attached and sold in satisfaction of decrees against a person who may hold it. Cases may be easily imagined in which, whatever the original use and purpose of the lands may have been, they may in time have become detached from those purposes and have come into the hands of

some private person, and the case might be such that a suit to recover them for the benefit of the idol would be barred. It would be idle, we think, in that case to say that the right, title, and interest of the person in possession could not be sold in satisfaction of a decree against him. Whether the right of the idol is in full force and vigor at present or not, it is clear that the defendants have been using the proceeds of the lands and dealing with them as if they had the full ownership. In that state of things, we think there was an interest which the decree-holder was at liberty to attach and cause to be sold, leaving the question what had been sold to be settled ultimately between the purchaser and the representative of the idol." 1

12. The mere purchase of a property in the name of Purchase in an idol will not be sufficient to create an endowment. In name of idol not evidence the Privy Council case of Maharanee Brojosoondery Debee v. Ranee Luchmee Koonwaree and others, this point arose for decision and the following observations of their Lordships are very important:—

"But the question is whether there is any evidence of an endowment property so-called. Now what is the evidence of an endowment? This is clearly not an

and bring a suit for the purpose of establishing the right of the idol. In this view of the case, their Lordships preferred to be bound by the authority of the decisions in Kalee Churn Gir Gossain v. Bungshee Mohun Doss and another (15 W.R., p. 339) and Radha Kishen and others v. Shah Ameerooddeen (11 W.R., p. 204), and accordingly ruled that there was no appeal to the District Court. But in either point of view they thought the decision of the Munsiff was right and ought to be maintained.

<sup>2</sup> 20 W. R., pp. 96-97.

<sup>1</sup> It was also incidentally laid down in this case that the order of the Munsiff should be treated as an order under S. 246 of the Civil Procedure Code, and that no appeal lay from it to the District Court. For if such orders were treated as orders under S. 11, Act XXIII of 1861, it must be held that a decision of the Court executing the decree otherwise than as reversed or altered on appeal would be final. Then, it seemed clear that it would be competent to any party interested to impugn the conduct of the sebait

endowment for the benefit of the public. The idol was not set up for the benefit of the public worship. There are no priests appointed, -no Brahmins who have any legal interest whatever in the fund. It is not like a temple endowed for the support of Brahmins, for the purpose of performing religious service for the benefit of any Hindu who might please to go there. It is simply an idol set up by the Maharajah, apparently in his own house, and for what purpose? Why, for his own worship. We constantly have suits claiming certain turns of worship, but here there is no turn or right of worship established. nothing stated in any way to show that the Maharajah intended that the idol should be kept up for the benefit of his heirs in perpetuity; and before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must be tied up in perpetuity, some clear evidence of an endowment must be given. the objects of the endowment? None of the essentials of an endowment are stated. The Maharajah appears to have purchased the property in the name of the idol, and that is all. Then he deals with the funds of the idol as if it were his own property. There is no evidence at all of any of the essentials of an endowment in favour of the idol.

Nominal endowments. "In the case of Mohatab Chand and another, in the 5th Volume of the Sudder Dewanny Adawlut Reports, 268, which was a very similar case, it was held that when an endowment is merely nominal, and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid under the Hindu law.

"It appears, therefore, to their Lordships, upon the authority of that case, and upon the principle of endowments, that this was not an endowment by the Maharajah in perpetuity for the benefit of the idol, so as to establish

that the property so conveyed to the idol was to be the property of the idol for ever and that nobody could alienate it. Suppose the Maharajah had established the idol in his house, would anybody pretend that he could not sell his house? Well, then, what would become of the idol's temple in the house? He could sell the house, notwithstanding he had put an idol there; and what would become of the idol itself? Here there was no endowment, no priest, no public, no one legally interested in the worship of this idol, except the Maharajah himself, and nothing to show that the Maharajah intended to establish it for the benefit of his sons and heirs, or anybody else, in perpetuity."

13. You will thus perceive that in order to pass the Effect of property in the thing endowed from the endower to the idol, it is very necessary that there should be an actual and bona fide dedication of the property to the idol. After such dedication the idol becomes the proprietor, and This is very A Privy
Council case the sebait is only the manager or trustee. well put by the Privy Council in their judgment in the defining case of Maharanee Shibessouree Debia v. Mothooranath as manager or Acharjo 1:-

"The talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The Sebait had not the legal property, but only the title of Manager of a religious endowment.

"In the exercise of that office, she could not alienate the He cannot property, though she might create proper derivative alienate; tenures and estates conformable to usage."

The plaintiff Mathuranath claimed to have acquired by purchase certain mouroosee mokururee tenures which he contended had been created by the sebait in favour of

<sup>&</sup>lt;sup>1</sup> My P. C. J., Vol. II, p. 529.

his vendors. In discussing the evidence which had been adduced to prove the permanent nature of the tenure claimed by the plaintiff, the Privy Council remarked:—

"Their Lordships think that there is no satisfactory proof in the cause that these jummas were ever held at a fixed invariable rent. One important element in this important enquiry has been wholly lost sight of, viz., the nature of the sebait title, and its legal inability to be the source of such a derivative title. To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a sebait, and is not therefore presumable."

Nor give permanent leases.

An earlier authority.

This case, therefore, is clear authority for the proposition that ordinarily a sebait cannot give permanent The same principle had been laid down by the Calcutta High Court in an earlier case—Prosunno Mayi Dassi and another (defendants) v. Koonjo Behari Choudhry and others (plaintiffs).1 The main facts of the case were:—One Gopeenath Gossain was appointed the sebait of an idol endowed by the ancestor of the plaintiffs. This Gossain, notwithstanding express prohibition in his deed of appointment, created a mokururee of the property in favour of one Nityanand, from whom the defendants appellants acquired it by purchase. The mokururee deed could not be produced, but the defendants contended to be allowed to remain in possession by right of prescription, on the ground that Nityanand had obtained ostensible possession from the Gossain, and they, the purchasers, have been in possession for about the past 30 years.

The Lower Court (the Principal Sudder Ameen) set aside the mokururee and delivered khas possession to the

<sup>&</sup>lt;sup>1</sup> W. R., Sp. No., p. 157.

plaintiffs, as heir of the original founder; and in appeal the question remained if the defendants should be allowed to remain in possession or not, as any other tenant, with long and unquestioned possession.

The High Court (Seaton-Karr and Glover, JJ.,) held in the negative, on the following amongst other grounds:—

"The endowment and the deed appointing a sebait clearly contained an express provision against the creation of any such encumbrance as is now the basis of the defendants' claim. If their vendor ever had possession of the property, he had such possession with the knowledge of the restriction in that deed, and he could never look to retain any lease or possession of the whole talook beyond the term of the life of the Gossain from whom he derived what he had.

"Moreover, we think that even in the absence of any such special restriction, it might well be argued for the plaintiff that a *sebait* is in the position of trustee for the founder, and could not create permanent encumbrances to the injury of the endowed property, and also that, in conformity with the tenor of decisions of the late Sudder Court, no prescription derived from the trustee could in such cases run against the heirs and representatives of the founder.

"Thus under any view of the case, as above expressed, we are clear that the defendants can show no ground even for being retained in possession as tenants of the whole property, and we confirm the decision of the Sudder Ameen, which treated the alleged *pottah* as non-existent at any time, and dismiss this appeal with costs."

15. The same considerations which restrict the powers Idol's estate of a sebait in granting leases apply with even greater alienable; force to restrict his powers of alienating the property altogether by sale or gift. In the Privy Council case

of Prosunno Kumari Debya and another v. Golab Chand-Babu, their Lordships observe that "there is no doubt that, as a general rule of Hindu Law, property given for the maintenance of religious worship and of charities connected with it, is inalienable." This was decided in an early Vyavastha given in the second volume of Macnaghten's Precedents of Hindu Law, p. 305, Case XIII, citing a text from the Srimad Bhagavata (Sec. XI):—

"He who seizes the subsistence of the gods or of priests, whether given by himself or another, is born a reptile in ordure for a million of million years."

but liable for sebait's loans for necessary purposes.

16. A sebait, however, in his capacity of manager has the same powers as a guardian as the manager of an infant to incur loans for necessary purposes, and such loans will bind the idol's estate. This point has been very fully elaborated in the Privy Council Judgment, <sup>2</sup> which I have already mentioned.

"But, notwithstanding that property devoted to religious purposes is, as a rule, inalienable, it is, in their Lordships' opinion, competent for the sebait of property dedicated to the worship of an idol, in the capacity as sebait and manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them. The authority of the sebait of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir, which was thus defined

Extent of sebait's powers.

<sup>&</sup>lt;sup>1</sup> My P. C. J., Vol. III, p. 450.

<sup>2</sup> Ditto, ditto p. 451.

in a judgment of this Committee, delivered by Lord Justice Knight Bruce:—

"The power of the manager for an infant heir to charge Analogous an estate not his own is, under the Hindu Law, a limited powers of manager of an and qualified power. It can only be exercised rightly in infant. a case of need or for the benefit of the estate. in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the bond fide lender is not affected by the precedent mismanagement of the estate. The actual pressure of the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But, of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir grounded on a necessity which his own wrong has helped to cause. Therefore, the lender in this case, unless he is shewn to have acted malâ fide, will not be affected, though it be shewn that with better management the estate might have been kept free from debt." [See Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree. 1]

"It is only in an ideal sense that property can be said Necessary to belong to an idol; and the possession and management character of sebait's of it must in the nature of things be entrusted to some powers. person as sebait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a decree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued, for want

of necessary funds to preserve and maintain them."

<sup>&</sup>lt;sup>1</sup> 6 M. I. A., p. 393; My P. C. J., Vol. I, p. 552,

When decree against a sebait binds his successor?

- 17. Some other important principles are laid down by the Privy Council in the same judgment. The first of these is that a decree *properly* obtained against one *sebait* binds his successor—the Courts taking care to see in each case that the decree had been properly obtained.
- "Assuming, then, that a sebait may incur debts, or borrow money for necessary purposes, in the sense above explained, it appears to be right and reasonable that judgment obtained against a former sebait in respect of debts so incurred should be binding upon succeeding sebaits, who, in fact, form a continuing representation of the idol's property.
- "If such debts and the judgments founded on them were not held to be thus binding on successors, the consequence would be that no *sebait* would be able to obtain assistance in times of need; for, on an apposite state of the law, he might defeat the creditors who had afforded it, by at once transferring the property to other *sebaits*, as actually done in the present case by *Rajah Baboo*, who, after the decrees were obtained against him, appointed the appellants, his wife and nephew *sebait* in his place.
- "The above view is consistent with what appears to have been the opinion of this committee in the passage already cited from 13 Moore's Indian Appeals and with two decisions in *India* (Juggut Chunder Sein and another v. Kishwanund and others, and Kissnonund Ashrom Dundy v. Nursingh Doss Byragee.

What is a "properly obtained" decree?

"Before, however, applying the principle of res judicata to judgments of this character, the Courts should take care to be satisfied that the decrees relied on are untainted by fraud or collusion, and that the necessary and proper issues were raised, tried, and decided in the suits

<sup>2</sup> Select Reports, p. 126.

<sup>&</sup>lt;sup>2</sup> 1 Marshall's Reports, p. 485.

which led to them. The conditions appear to have been fulfilled in the present case."

18. 'The concluding portion of the Privy Council's What is salejudgment seems to lay down the principle that the exe-idol's estate, in cution in such cases should be, not by sale of the dewuttor of decree? property, but by sequestration of the rents and profits of the idol's property in the hands of the sebait. for this course are not given in their Lordships' judgment, who simply say that "it is to be observed that execution of the judgments sought to be set aside is decreed, and in their Lordships' view rightly, only against the rents and profits of the dewetter lands. Whether the judgments have been satisfied by the profits already received, or whether some provision ought to be made out of such profits, during the pendency of the attachments, for the continuance of the worship of the idols, are questions not raised in this The object of the present suit is to have the properties released from attachment on the ground that the decrees were obtained by fraud, and were in no way binding on the succeeding sebaits. In deciding against this claim their Lordships do not desire to prejudice the determination of the questions above adverted to, if they should be hereafter raised."

The property dedicated to gods being by its very An apparent nature inalienable under the Hindu Law, we are to take preventing it that the Privy Council have on grounds of equity and sale of decentor property. natural justice extended the remedies of bona fide creditors to the extent of giving them an opportunity of realising their just dues without destroying the endowment altogether by a sale in execution. To that extent the idol enjoys a greater privilege than the minor by analogy to whose case the creditor is allowed to bind the idol's property. The dictum of the Privy Council is apparent authority to prevent a sale of the dewuttor pro-

perty in execution of a mortgage-decree and à fortiori of a simple money-decree.

Another view of the P. C. judgment.

This view, however, of the judgment is opposed to the reservations made in the body of the judgment,1 and viewed in this light the expression in the concluding part of the judgment that the execution had been rightly decreed "only against the rents and profits of the dewuttor lands," must be understood in the sense that, assuming the original decrees to have been rightly passed, the execution had been rightly ordered to proceed against only the rents and profits as directed in the said decrees.

Grant of mokururee lease of the mokurures rent by mbait.

19. In the later case of Kunwar Durganath Roy v. or sale of part Ram Chunder Sen, the Privy Council, having in a passage which I have cited in the course of this lecture. found that there was no dedication of the disputed property to the idol, proceed to deal with the case upon the footing of a valid dewuttor and arrive at the conclusion that, under the particular circumstances, the sebait, if any, would have been justified in giving a mokururee lease, and also in selling a portion of the proprietary interest reserved to the idol under the mokururee lease:-

"Supposing the case had rested there, their Lordships

Rajah Baboo had no power to make a specific pledge of the dewuttor property, since they are not sitting in appeal to determine whether his conclusions of fact or of law are right or wrong. They can now properly deal only with the operation and effect of the decrees as they stand.

"It is to be observed that the question is not raised whether the lands themselves could be sold under the decrees." (My P. C. J., Vol. III, p. 450.)

<sup>&</sup>lt;sup>3</sup> The reservations referred to are to be found in the following passages of the above judgment :-

<sup>&#</sup>x27;The above two decrees are entitled to the force due to the judgments of competent Courts. The determination of the issues is res judicata, and their Lordships think that in the absence of proof of fraud and collusion, the High Court was right in holding that it could not re-open and review the judgment founded upon them. Nor need their Lordships now say whether the Judge in the first case was right in holding upon the evidence of title before him that

<sup>\*</sup> Ante, p. 139; My P. C. J., Vol. III, p. 685.

feel no doubt whatever that the judgment of the High Court was perfectly right. But it does not rest there, and it now becomes material to consider the terms of the mourusi pottah and of the bill of sale. Mr. Leith, in his reply, very properly relied on them as being strength of his case. If they are to be used as evidence only, then this evidence must be weighed with all the other evidence in the case, and so weighing it, their Lordships are not satisfied that it turns the scale in favour of this property being dewuttor. But the statement in these deeds are relied upon by plaintiffs as an admission which estops the parties to them from asserting that these lands were not dewuttor; but if the statements are relied on in this way, they must be taken as a whole; and so taking them it would appear that, granting the lands were dewuttor, the sale would be justifiable, the statement being that the sale Justified when was made for the purpose of the repair of the temple of repairs of the the idol. The mokururee was granted, according to the temple. statement, because the temple was out of repair, and money was wanted to restore it; the sale of part of the mokururee rent was granted in consideration of money stated to be required for the completion of the temple which it was stated was already in course of erection. therefore, the statements in these deeds are taken as a whole, the alienations they contain are justifiable, assuming this property to have been dewuttor land."

## CHAPTER VI.

## (Lecture VI.)

On Alienations for Religious Purposes.

EXCEPTIONS TO THE GENERAL RULES OF HINDU LAW IN CASE OF PIOUS GIFTS: Not void though made by men, stricken with disease, &c., 1.-Not invalidated by want of delivery to or non-acceptance by dones, 2.-Not void though acceptance by deities impossible, 3.-ALIENATION BY FATHER OR MANAGING MEMBER OF JOINT FAMILY; In Mitakshard: assent of sons not necessary to gift by father of ancestral immoveable property, 4; Gopal Chand Pande and Beharv Lal Pande v. Babu Kunwar Singh, 5; Similarly sale for pious purposes not necessarily void, though without assent of sons, Madangopal Thakur v. Ram Bux Pandey, 6; Raghunath Prosad v. Gobind Prosad, 7; What is the proper alienable portion of ancestral property in Mitakshara family? The absolute dominion of father in Dáyabhága, Radhaballabh Tagore v. Gopes Mohan Tagore, restrictions in case of joint property, 8.—ALIENATION BY WIDOW. (a) Shastric authority: the sanction common to all schools, the general prohibitory rule in Dáyabhága countermanded by other special authorities, 9.—(b) DECISIONS, (i) limiting the extent of widow's power to alienate, "moderate portion," Mukhoda v. Kulhani, 10; "proportioned" to whole estate, Ram Chunder Sharma v. Gungagobind Bunrhoojeah, ib.; powers larger 'than those for purely wordly purposes,' The Collector of Masulipatam v. Cavelly Venkata Narainappa, ib.; no specific limit,  $\frac{1}{10}$  to  $\frac{3}{10}$  allowable and  $\frac{9}{18}$  too much, ib.—(ii) decisions indicating the nature of the pious purposes to constitute valid alienations by widows: spiritual benefit to husband necessary-Kartcik Chunder Chukerbutty v. Gour Mohun Roy, 11: pilgrimage to Benares not a legal necessity, Haromohan Adhikary v. Sreemutty Aulockmony Dassee, 12; nor the digging of a tank-Ranjit Ramkoolal v. Mahomed Waris, ib .- (iii) Observations on the decisions; what constitutes spiritual benefit to husband? 13.—(c) bona fides of alienation: gift to widow's own relations, 14; a case of gift by a childless widow to her brother, 15; the case discussed, the point settled by Bijoya Debi v. Annapoorna Debi, 16.-Powers of disposition allowed to a SUTTEE; the case of Pandita Royaloo. 17 .-

The decision and Vyavastha criticised; the spiritual benefit by the suttee to her husband, 18.—The suttee's powers of disposition how intended, 19.

It is observed by Mayne¹ that "gifts for religious Exceptions in purposes are made by Kátyáyana an exception to the rule for religious that gifts are void when made by a man afflicted with disease and the like." The full text of Kátyáyana, quoted in Jagannatha's Digest,2 is translated as follows by Colebrooke :-

"What a man has promised in health or in sickness, The text of for a religious purpose, must be given; and if he die Kátyáyana. without giving it, his son shall doubtless be compelled to deliver it." No doubt the ordinary meaning is that ascribed by the translator and by Mayne, but Jagannatha in his commentary on the above text of Kátyáyana, after repeating the ordinary meaning, puts forward a different interpretation of his own8:-

"But we thus expound it: the master of the family Jagannatha's being gone to a foreign country, or deceased or the like, a debt contracted by his son, his servant or the like, and made known to him, must be paid by the chief of the family when he returns from that foreign country, or recovers from the disease. But if he die without paying it, the debt must be discharged by his son, or by the successor to the estate or other person liable to the payment of it; on failure of the first respectively, by the next in succession. 'For a religious purpose,' or from a What is "a religious motive; that is, with view to the strict obser-religious vance of duty: the construction is, he must pay it, on that account; meaning, that otherwise duty is violated."

It would thus seem that the "religious purpose" is connected not with the promise but with the payment, that

<sup>&</sup>lt;sup>1</sup> Hindu Law and Usage, p. 458, para. at 393.

<sup>&</sup>lt;sup>2</sup> Book I, Chap. V, sec. 3, verse 195.

Colebrooke's Digest, Madras Reprint, Vol. I, pp. 206-207.

The true meaning.

is to say, that the promised payment for secular purposes is to be made from a religious motive. But in a later part of the same Digest<sup>1</sup>, Jagannatha comes back to the true interpretation. In introducing the subject of "subtraction of what has been given" the learned author quoting the text of Narada—

"In civil affairs, the law of gift is fourfold; what may or may not be given, and what is or is not a valid gift,"—

comments as follows :-

Religious gifts not void though made th disease.

"The rule to be established, that gifts made by a man afflicted with disease and the like are void, regards civil gifts, not donations for a religious purpose. This title of law does not extend to a gift made for a religious purpose: the donation is valid, if it be made by the owner of the thing." After this, he repeats the very same text of KATYAYANA quoted above, and remarks: "RAGHUNANDANA and other authors expound this text, 'what a man, even afflicted by sickness, has promised to give, must, if he die, be given by his son.' It is not proper to say, that what he has promised must necessarily be delivered, but the gift is not valid. The rule must be understood of other cases as well as of sickness; for the reason of the law is equally applicable."

Not invalidated by nondelivery to or non-acceptance by dones.

2. As a general rule, a gift is complete and irrevocable under Hindu law when the donee has obtained possession. An exception, however, is made in the case of gifts for pious purposes. This can be gathered from the text of Kátyáyana already discussed which compels the son to give over possession of the thing promised, but not given by the father, for religious purposes. A similar con-

Book II, Chap. IV, sec. I, verses 2 & 3; Colebrooke's Digest, Vol. I, pp. 399-400.

Colebrooke's Digest, Vol. I, p. 400.

clusion is derived by Jagannatha from the text of Dhaumya quoted and commented on by him in his Digest, Book V, Chap. I, sec. 1, verse 2 (Madras Reprint, Vol. II, p. 190) :—

"Dhaumya:—On failure of the proper object, how shall a present be disposed of, which was bestowed on an absent person? Let it be delivered to kinsmen sprung from the same original stock, or, on failure of these, to his distant kindred.

"From this text, which enacts that a chattel given Property vesting before away, even though it has not been accepted, must be acceptance. delivered to the kinsmen of the person intended, it appears that property is conferred by mere gift without acceptance, else, why should the kinsman of the person intended be alone mentioned? Consider the reverse as true; for, did property vest in the person intended through gift alone without acceptance, then it must of course be taken by a son or other heir, because it has become a part of the patrimony; and for what purpose has the text of DHAU-MYA been propounded? A present made for the benefit of a deceased Bráhmana erroneously supposed to be living, must be delivered to his son or other heir: is not the text designed to convey this precept? What follows from this? For the argument supposes that property was vested before Therefore should a present not be delivered Gift completed to him for whom it was intended, the law shows the gift donee's heirs. to be imperfect: hence it must be delivered to complete In answer to the question; 'to whom should it the gift. be delivered if he died before or after the donation'? text of DHAUMYA ordains, that it shall be delivered to the son or other heir, in like manner as donaries or the like given in honour of deities must be delivered to priests and the rest."

the ancestral estate, for a pious purpose, without consent of sons.

not necessary for pious gifts of small portion.

Examples of pious gifts.

was valid or otherwise, according, as such essential, existed According to texts of the Saint Nárada, or not. cited in the Mitakshara and other works, a gift made, under the influence of fear, as a bribe, and in fourteen Assent of sons other categories, was void. The assent even of the sons could not legalize such gifts. On the other hand, according to the texts of Kátyáyana and another Saint (Vyása was meant), which are cited in the same books, the gift of a small portion of land, for the sake of piety, even without the assent of sons, was valid; and the King is enjoined, to compel a son, to surrender any inconsiderable property, which his deceased father (whether sound or sick) may have given or promised, for a spiritual object. The Pundit thus illustrated these pious gifts:-1st-A present for performing indispensable rites in honour of ancestors. 2nd, a present to priests officiating at sacrifices and the like. 3rd, pious and reverential gifts to Brahmans,—as Brahmutra, Krishnárpana, Padárgha, in satisfaction of a vow, -as Vritti or aliment, -also gifts from affection towards Vishnu and other divinities. Pundit declared his opinion to conform with the Mitakshara, Viramitrodaya, Vyavahára Mádhava, Vyavahára Kaustubha, works current in Shahabad.

> This view of the law was accepted by the Judges of the Sudder Dewany Adalut, and in conformity therewith the plaintiff's suit was dismissed. This case has been followed by the Allahabad High Court in a case which I shall mention further on.1

Sale for pious void without assent of sons.

The passage above cited from the Mitakshara. purposes also not necessarily authorising the father to alienate ancestral immoveable property for pious purposes was cited with approval by

<sup>&</sup>lt;sup>1</sup> See sec. 7, p. 161.

the High Court in the case of Muddun Gopal Thakur and others v. Rambuksh Pandey and others (6 W. R., p. 71, see p. 72), and the proposition deduced therefrom that Muddun Gopal "the sale by a father of ancestral immoveable property Rambush without the concurrence of his sons is not necessarily Pandey. void, though it may be avoided, unless the purchaser can shew that it was made during a season of distress for the sake of the family or for pious purposes."1

7. In the case of Raghunath Prasad v. Gobind Prasad Raghunath (I. L. R., 8 All., p. 76), the father had transferred a house Gobind Prasad. which was part of ancestral property to an idol represented by a trustee, without the consent of his adult son. The latter thereupon instituted the suit to cancel the deed of transfer on the ground that, under the Hindu law, the father was incompetent to make any disposition of the ancestral estate without the son's consent. The suit having been dismissed by the first Court, the son appealed to the District Judge pleading (1) the incompetency of the Pleas for father so to deal with the ancestral property; (2) the setting aside father's gift to absence of any legal necessity for the alienation; and (3) the father's bad faith in the transaction, the motive for the endowment being not piety to the gods, but malice to the son. The District Judge decided that the father had no power to alienate against his son's will ancestral estate, for providing a permanent shrine for the family idol, and that even if he had such power, for a small portion of the estate, the alienation was excessive in the particular case; and upon these grounds he decreed the appeal and the suit. Upon appeal to the Allahabad High Court, the learned Judges remarked that "an examination of the authorities is sufficient to shew that a father is competent Father's to deal with ancestral property, not only for the special competency upheld.

<sup>1</sup> 6 W. R., p. 73.

P, HLE

162 managing member's power to alienate. [CHAP: VI.

exigencies mentioned by the Judge, but also to make pious and reverential gifts to Brahmans, as Brahmutra Krishnarpana," also "gifts from affection to Vishnu and other divinities"—Gopal Chand Pande v. Babu Kunwar Singh. Pands v. Babu The finding of the Judge on this point, therefore, cannot Kunwar Singh The finding of the Judge on this point, therefore, cannot stand; and we are not informed on what materials he based his finding that the value of the estate is Rs. 4,000 only. The Judge has also omitted to decide the important plea as to the real motive underlying the gift—that is to say, the question of the good faith of the donor." The learned Judges, not having materials on the record to enable them to dispose of these questions, therefore referred the following issues for trial under sec. 566 of the Civil Procedure Code :--

"1. What is the value of the entire ancestral property of the parties to the suit?"

Has the endowment been made bond fide for the satisfaction of the idol, and the benefit of the donor's soul, or from motives of spite against the plaintiff-respondent, as pleaded by him in his fifth plea before the Judge?"

It would seem therefore to follow from the authorities above cited that the father or other managing member in a Mitakshara family is competent to make an alienation of a small portion of the ancestral estate for pious purposes, without the consent or even against the will of the other adult members of the joint family. Apparently, the same rule will also be applicable in a Dayabhaga family consisting of co-parceners. As to what constitutes a small portion would always be a question of fact to be decided by the Court with reference to all the circumstances of the In the case in the 5th Select Reports, a proportion of 755 to 100,000 was considered small and the gift

Analogous power of managing member of joint family, under Mitakshara

Gopal Chond

The question of motive

important,

followed.

or under Dayabhaga.

What is the proper portion alienable?

<sup>&</sup>lt;sup>1</sup> S. D. A. L. P., 1843, Vol. 5, p. 24. See above, sec. 5, p. 159.

See supra, § 5.

LEC. VI. T ALIENATION OF WIDOWS FOR PIOUS PURPOSES. upheld. In the Allahabad case,1 apparently, the High Court considered that the proportion of 693 to 4,000 would not be small and could not be sanctioned. The gift, Gift must be however, even of the proper portion of the ancestral estate, religious should be one made from proper religious motives and not purpose. merely as a legal device for injuring co-sharers. perty where the donor has absolute dominion, as in the case of ancestral property, in the hands of a father govern- Father's absoed by Dayabhaga law, the donor is competent to give away Dayabhaga. even the whole of his own property to the exclusion of his heirs for religious as for any other purposes, as was impliedly admitted in the case of Radhaballabh Tagore v. Radhaballabh Gopee Mohun Tagore, mentioned in Sir Francis Macnagh- Tagore v. Gopee Mohun Tagore, ten's Considerations on Hindu Law, p. 335. In the case of joint property there is ordinarily no absolute dominion, but a special discretion is vested in the managing member Discretion of to alienate a portion of the joint property for pious purposes. member in The disposal, however, must be done in good faith, really alienation. with a view to acquire religious merit, and not merely out be bond fide. of a desire to injure other co-sharers.

It is remarked by Maynes that in Western India Alienation by grants for religious endowments have been held valid even pious purposes when made by a widow, of land which descended to her all schools. from her husband, and to the prejudice of her husband's male heirs. The doctrine, however, is not confined to Western India, but is common to all schools of Hindu law. In Bengal for instance, side by side with the well under- In Bengal, stood rule that "the wife must only enjoy her husband's limited to gifts estate after his demise; she is not entitled to make a gift, only for hussale or mortgage of it" (Dayabhaga, Chapter XI, sec. 1, tual welfare. para. at 56), there is authority for the widow to alienate such property in part for pious purposes. Thus Jagannatha in

<sup>1</sup> See supra, § 7.

<sup>&</sup>lt;sup>9</sup> Hindu Law and Usage, para. 393.

his Digest, Book V, Chapter VIII, verse 399, Madras Reprint, Vol. II, p. 526, says: "Raghunandana acknowledges that, for the purpose of raising her husband to a region of bliss, a wife may give away property left by him, and devolving on her by the failure of male issue. Hence it is understood that she ought not to do so for any other purpose. Vachespati Bhattacharya has delivered the same exposition. Bhavadeva also concurs nearly in the same opinion." The following texts also are quoted by Jagannatha in his Digest! as indicating the nature of the gifts, which the widow should practise for the spiritual welfare of her deceased husband.

Texts enjoining acts conducive to husband's spiritual benefit.

- "Vyása:—After the death of her husband, rigidly practising the austerities of a student in theology, the widow should, after bathing, daily present water to the manes of her husband from the hollow of both hands joined.
- "2. Day after day let her perform with humility the worship of deities; and, constantly fasting at appointed times, adore Vishnu.
- "3. Let her give presents to the chief of priests, that her purity may be augmented; and observe the forms of austerity prescribed by law.
- "4. A woman ever assiduous in her duty, thus redeems both her husband abiding in another world, and herself, O beauteous female!"
- "Smriti, cited in Dayabhaga Tatwa and Madanaparijata:—Whatever is most desirable in this world, whatever most delighted her husband, that must be given to some virtuous man by a widow anxious to gratify her lord."
- 10. As regards judicial decisions, the Pundits of the Decisions limit-Sudder Dewanny Adalut, who were consulted in the case

Decisions limit ing the extent of widow's power.

Colebrooke's Digest, Vol. II, p. 528; also quoted in the Dayabhaga Chap. XI, sec. 1, ol. 43.

of Mukhoda v. Kulleani, declared that, according to the Shastras, "a gift by the widow of the whole estate of her husband is invalid; but that a gift of a moderate portion A moderate of his property made by the widow, with a view to his spiritual benefit, may be valid." Similarly in the later case of Ram Chunder Surma v. Gunga Gobind Bunhoojeah, the Pundits gave a Vyavastha to the effect that the widow was competent to "make a gift proportioned to the Proportioned extent of her late husband's property for the benefit of his perty. In the well-known case of The Masulipatam v. Cavelly Venkata Narainappa, the Privy Council observe that "it is admitted on all hands that if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual Larger powers welfare of her husband, she has a larger power of disposi- and charitable tion than that which she possesses for purely worldly pur- purposes, &c. poses." (8 Moore's Indian Appeals, p. 529.) Of course there is no specific proportion or limit laid down in the No specific law up to which the alienation is justifiable. The Pundits in their Vyavastha in the case from the 4th Select Reports above mentioned, indicated their opinion that the widow might so alienate from one to three-sixteenth of her husband's property, and in that particular case the gift of nine-sixteenth of the property was declared illegal.

11. The whole object of the Hindu law in giving a Decisions indiqualified interest to the widow being that of securing the cating nature of pious purspiritual benefit of the deceased proprietor, certain decisions tute valid of the High Court have drawn a distinction between pious alienations by widows.

Parposes in so far as they are or are not conducive to the spiritual benefit of the husband. Thus, in the case of

<sup>&</sup>lt;sup>1</sup> 1 Select Reports, p. 82.

<sup>&</sup>lt;sup>2</sup> 4 Select Reports, p. 147.

Kartick Chunder Chuckerbutty v. Gour Mohun Roy it was ruled that a Hindu widow cannot endow an idol with her husband's property or a portion thereof to the detriment of the reversioners.

The judgment of the High Court (Pundit and Campbell. JJ.) runs thus:-

Kartick Chunder Gour Mohun Roy.

"In this case the question is whether a widow can Chuckerbutty v. endow an idol with her husband's property, or a portion thereof, to the detriment of the reversioners. claiming to hold the property as custodian of the idol, contends that such a dedication is for the benefit of the deceased husband's soul, and therefore valid under Hindu law. But we think that, even under the Hindu text-books (which being written by Brahmins, take the views most favourable to Brahmins and priests), he has failed to shew any sufficient authority for his contention. He refers us to Shama Churn's book, p. 61, where we find a question to this effect:—'For the purpose of raising her husband to Spiritual benea region of bliss, a wife may give away property left by him.' But in another passage, quoted in the main text of the same page, we find 'great benefit is done to a departed soul by paying his debts, by bestowing his daughter in marriage, and supporting his family; indeed if these duties be neglected, he is doomed to hell.' Nothing is said of such a duty as endowing an idol; from this we rather gather that the fulfilment of the moral and religious duties of the deceased are those by which he is to be raised to bliss, not a dedication by the widow of the nature of that under which the special appellant claims, which, under any circumstances, could only be supposed to conduce to the spiritual benefit of the widow herself (who made the gift without her husband's consent), and is accompanied

fit to husband essential.

Endowing an idol held not conducive to husband'sspiritual benefit.

by a temporal benefit to the special appellant to which he is not entitled. We dismiss the appeal with costs."

- 12. In another case, Huro Mohun Adhikari v. Srimutti Pilgrimage to Auluck Money Dossee (1. W. R., p. 252), it was held that legal necessity a pilgrimage to Benares by the widow was not a legal necessity which might justify the alienation by her of her husband's property. Lastly, it has been held in the case of Ranjeetram Koolal v. Mahomed Waris, that the digging nor the digging of a tank, although a meritorious act and a great convenience for the public, was not a legal necessity which could justify an alienation by the widow.
- It seems to me that these decisions lay down the Remarks: law rather too broadly by ignoring the distinction between spiritual welfare and legal necessity for worldly purposes. Spiritual welfare should be The promotion of the spiritual welfare of the deceased is distinguished a desirable object, although it may not be a necessity like from legal necessity. the performance of the sradh, the non-performance of which entails torments on the departed. If the religious act performed by the widow conduces to the spiritual benefit of the husband, I venture to think that within proper limits the widow might alienate the husband's pro-The case of Kartick Chunder Chuckerbutty Hindu widow (1 W. R., p. 48) assumes that there are certain acts of solely to her own benefit. which the religious merit is solely acquired by the widow, and starting from such premises the learned Judges rightly conclude that an alienation could not be justified for such religious purposes, as for example the dedication of the idol in that case. It seems to me, however, that, under Authorities for the Hindu conception, it is difficult to say that the widow cipation from deceased huscan perform any religious act with sole benefit to herself, band. excluding the soul of her deceased husband from partici-

<sup>1</sup> 21 W. R., p. 47.

Vrihaspati.

pation therein. According to the text of Vrihaspati, cited in the Dayabhaga, Chap. XI, sec. 1, "in scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives." This text in itself is authority for holding that the husband and wife participate in the effects of good and evil actions, and that this partnership is not dissolved by the death of either partner. The widow is half the body, and the whole body shares in the results of the acts performed by the mundane half. This meaning is very clear from another passage in the same treatise.

"But, on failure of heirs down to the son's grandson. the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood? [and not, like them, from the moment of their birth, succeeds to the estate in their default. Thus Vyasa says: 'After the death of her husband, let a virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and specially the adoration of VISHNU, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. woman who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss].'8

Vy**á**sa.

<sup>&</sup>lt;sup>1</sup> Dayabhaga, Chap. XI, sec. 1, cls. 43 & 44.

Chúdámaní, S'rí'crishn'a and Mahe's'wara.

<sup>8</sup> S'ri'crishn'a.

"Since by these and other passages it is declared that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror]; for they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper."

The above afford very clear authority for holding that A groundless the soul of the deceased husband participates in the religious merit of actions performed by the widow, and consequently there is no ground for drawing a distinction between acts which are productive of religious merit to the widow solely and those which benefit the soul of her husband.

14. The alienation, however, must be in good faith for Bona fides of pious purposes and not for injuring the reversioners under alienation. the cloak of religion. There is always a natural tendency Gifts by childin the case of childless widows, who alone can succeed less widows. to their husband's property, to aggrandise their paternal relations at the expense of their husband's relations. Shastras have aimed at counteracting this tendency by specially inculcating upon her the outy of assisting her husband's relations. Thus Vrihaspati, quoted in the Dayabhaga, Chap. XI, sec. 1, cl. 2, specially recommends Should be to the bestowal of gifts to the husband's relations and the her husband's relations like, and in cl. 63 of the same chapter and section the text of Vrihaspati is again quoted with very significant comments:-

"Let her give to the paternal uncles and other relatives of her husband, presents in proportion to the wealth, Vrihaspati directs it, at her husband's funeral rites. saying, 'With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the

children of his sister, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family. The term 'paternal uncle' intends any sapinda of her husband; 'daughter's son's, the descendants of her hushand's daughter; 'children of his sister,' the progeny of her husband's sister's son; 'maternal uncles,' her husband's and not to the mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous."

family of her own father.

A case of gift by widow her own brother.

In an early case a childless Brahmin widow, having succeeded to her husband's estate, made a gift of a certain portion of the lands to her own brother, notwithstanding the existence of her husband's brother's sons, alleging in the deed of gift that the land was bestowed for the spiritual benefit of her husband. Upon a reference to the Pundits the following Vyavastha was given:-

Vyavastha.

"R. It does not appear from the question what quantity of the land was given; but the gift of a small part only of the estate, for the spiritual welfare of her deceased husband, is legal; because although it is laid down in the Dayabhaga and other books of law, that the widow of a deceased man who left no male issue, may only enjoy his property until her death, she is entitled to make a gift of small part of it for the benefit of her husband, which if she do, the gift should be upheld as legal."

Doubts as to the bona fides of the above gift.

de la secono

It will be observed that the Vyavastha does not at all deal with the question of the donee being the widow's own brother and the great doubt thereby created as to the good faith of the transaction. Looking to the positive injunctions in the Dayabhaga that the widow should bestow gifts on her husband's relations and not on her own relations, I think it would be safer to test such cases by the standard of good faith and to refuse their validity if

it should be found that the real motive for the gift was rather an affection for the widow's own relations than a desire to benefit the soul of her husband. The case of The point set-Mussummat Bijoya Debee v. Mussummat Annapurna Debee, Bijoya Debee v. reported in 1 Select Reports, p. 215, would furnish some purna Debee. authority for such a course. There a widow made a gift of her husband's estate to her own daughter's son to the prejudice of other heirs, and an attempt was made to justify the alienation on the ground of its being "a charitable donation by the widow, beneficial to the soul of her husband." This attempt met with deserved failure, and the alienation was declared to be not binding on the husband's heirs.

Connected with the question of a childless Hindu Dispositions widow's powers of disposition for charitable purposes, over property inherited from her husband, is the question of the powers of disposition of a widow about to become a Sati. In the second volume of Strange's Hindu Law, there is a case<sup>1</sup> reported which, truly read, throws some light on this point, although its significance in that respect was apparently overlooked at the time by the European authorities concerned. It appears that one Pundita Royaloo The case of having died possessed of some self-acquired lands, and Royaloo. having no male issue, the inheritance devolved upon his She, however, ascended the funeral pile with him, but before doing so she divided her husband's estate into · four parts, giving one part to her husband's brother's son, two parts to her husband's sister's sons and the remainder to Brahmins. The widow was apparently dissatisfied with her husband's brother's son, and charged against him that his father, i.e., her husband's brother, had been degraded from caste, and she seems to have

<sup>&</sup>lt;sup>1</sup> Strange's Hindu Law, Vol. II, p. 409.

been more favourably disposed towards her husband's sister's sons, her obsequies being performed by them at The degradation from caste, however, was not proved in the subsequent litigation, and may therefore be eliminated from the consideration of the legal problem concerned. The case then stood simply thus, that the widow under the above circumstances had given onefourth of her husband's estate to the immediate reversionary heir of her husband, one-half to her husband's sister's sons, and the remaining one-fourth to Brahmins. ther's son was dissatisfied with this disposition and brought a suit to set aside the gift by the widow to the sister's sons, as one in excess of her authority. The plaintiff Mallaya having apparently succeeded in the first Court, the sister's sons appealed to the Masulipatam Provincial Court, where the question was proposed to the Pundit, how far the widow had a right, by the Hindu law, so to dispose of the land left by her husband, or whether it became the property of his brother's son the plaintiff respondent? The answer given was that "the wife of Pundita Royaloo had sufficient authority to give away the land left by her husband." Colebrooke and Ellis, in comand Ellis from menting upon this Vyavastha, dissent from its correctness, in the following terms:

Dissents of Colebrooke the Vyavastha.

Colebrooke :-

"It is maintained in the Madhavya, that no widow can give away immoveable property, coming to her from her. husband, without consent of the next heirs. This seems to be the correct doctrine. Pundita had doubtless power to give away his lands; but what he did not give away, may, and should, pass in succession."

Ellis:

"The widow had no right to make the gift in question. She had a right to use the property for charitable purposes; but the law limits even these to what may be consistent with her circumstances and conditions in life."

18. Colebrooke no doubt is correct in stating the Remarks. general proposition that a widow cannot give away the immoveable property of her husband without the consent of the next heirs, but he overlooks the special powers of alienation possessed by her for religious and charitable The husband's sister's son (bhartuh svastriya) is specially enumerated as a fit recipient for the widow's liberality in the text of Vrihaspati, quoted in Dayabhaga, Chap. XI, sec. 1, cls. 2 and 63, and the same text is quoted in the Viramitrodayal (Chap. III, Part 1, sec. 2) as a text of Prajapati. Ellis, indeed, had this in mind, but he objects to the Vyavastha on the ground that the independent power to give away property for charitable purposes is a limited power having regard to her circumstances in life. There is no doubt that this is true in the general sense, and in any ordinary case a gift by the widow of one-half of the husband's estate for religious or charitable purposes would be considered excessive. It seems to me, however, Great spiritual that the Vyavastha is correct in view of the special privi- benefits conleges conferred upon an intending Sati. The spiritual husband by Sati. benefits conferred by such a widow upon her husband are immense and innumerable.

"Angiras<sup>2</sup>:—That woman who, on the death of her Angiras. husband, ascends the same burning pile with him, is exalted to heaven, as equal in virtue to Arundhati.

"2. She who follows her husband to another world, shall dwell in a region of joy for so many years as there are hairs on the human body, or thirty-five millions.

<sup>&</sup>lt;sup>1</sup> Golap Chandra Sastri's translation, p. 134.

<sup>&</sup>lt;sup>2</sup> Colebrooke's Digest, Vol. II,

p. 153 and p. 155; also quoted in Raghunandan's Suddhi-tattvam, Mathuranath's Ed., pp. 4-5.

- "3. As a serpent-catcher forcibly draws a snake from his hole, thus drawing her lord from a region of torment, she enjoys delight together with him.
- "4. The woman who follows her husband to the pile, expiates the sins of three generations, on the paternal and maternal side, of that family to which she was given while a virgin.
- "5. There, having the best of husbands, herself best of women, enjoying the best delights, she partakes of bliss with her husband in a celestial abode, as long as fourteen Indras reign.
- "6. Even though the man had slain a priest, or returned evil for good, or killed an intimate friend, the woman expiates those crimes: this has been declared by Angiras.
- "7. No other effectual duty is known for virtuous women, at any time after the death of their lords, except casting themselves into the same fire.
- "8. As long as a woman, in her successive transmigrations, shall decline burning herself, like a faithful wife, on the same fire with her deceased lord, so long shall she be not exempted from springing again to life in the body of some female animal.
- "9. When their lords have departed at the fated time of attaining heaven, no other way but entering the same fire is known for women whose virtuous conduct and whose thoughts have been devoted to their husbands, and who fear the dangers of separation."

"Vyása¹:—Learn the power of that widow, who, hearing that her husband has deceased, and been burned in another region, speedily casts herself into the fire.

Vyasa.

<sup>&</sup>lt;sup>1</sup> Alluded to in Raghunandana's Suddhitattvam.

- "2. Though he have sunk to a region of torment, be restrained in dreadful bonds, have reached the place of anguish, be seized by the imps of Yama,
- "3. Be exhausted of strength, and afflicted and tortured for his crimes; still, as a serpent-catcher unerringly drags a serpent from his hole,
- "4. So does she draw her husband from hell, and ascend to heaven by the power of devotion. There, with best of husbands, lauded by the choirs of Apsaras,
- "5. She sports with her husband as long as fourteen Indras reign."

The Sancalpa<sup>1</sup> for the widow desiring to immolate her- The Sancalpa self on the funeral pyre of her husband, is evidently framed on the basis of the above text of Angiras:—

"On this month, so named in such a pacsha, on such a tithi, I (naming herself and her family<sup>2</sup>) that I may meet Arundhati<sup>3</sup> and reside in Swarga; that the years of my stay may be numerous as the hairs on the human body; that I may enjoy with my husband the felicity of heaven, and sanctify my paternal and maternal progenitors, and the ancestry of my husband's father; that lauded by the Apsarases, I may be happy with my lord, through the reigns of fourteen Indras; that expiation be made for my husband's offences, whether he has killed a Bráhmana, broken the ties of gratitude, or murdered his friend, thus I ascend my husband's burning pile. I call on you, ye guardians of the eight regions of the world: Sun and Moon! Air, Fire, Æther, Earth and Water! My own

<sup>&</sup>lt;sup>1</sup> Colebrooke's Essays, Vol. I, p. 115; Raghunandan's Suddhitattvam, p. 28.

<sup>&</sup>lt;sup>9</sup> Gotra the family or race. Four great families of Bráhmánas are now extant, and have branched into many distinct races. Since

the memorable massacre of the Cshatriyás, by Parásu-Rama, the Cshatriyás describe themselves from the same Gotras as the Bráhmánas.

<sup>•</sup> Wife of Vasishtha.

<sup>4</sup> Acása.

Soul! YAMA! Day, Night, and Twilight! And thou, Conscience, bear witness: I follow my husband's corpse on the funeral pile."

Expiation of husband's sins by Sati.

"The chief characteristic of Satism," remarks Tod, is its expiating quality: for by this act of faith, the Sati not only makes atonement for the sins of her husband, and secures the remission of her own, but has the joyful assurance of reunion to the object whose beautitude she procures."

The Sati's powers of disposition

Colebrooke in his Essay on the duty of a faithful Hindu widows quotes from a ritual the direction that the widow about to immolate herself should make a present These no doubt are her of her jewels to the Brahmins. stridhan property which she could always dispose of at her own will and pleasure. But practice, if not precept, seems to have extended her powers of disposition. practising the rite of Sati, was looked upon as the incarnation of the great Sati<sup>4</sup> Parvati, who renounced her life rather than tolerate an indignity upon her husband. women had supernatural powers ascribed to them, their utterances were revered as prophecies, and naturally it would be considered as some sort of sacrilege if anything out of her husband's estates which she had chosen to give away to a fit recipient should be sought to be resumed. In Steele's valuable compilation of the customs of Hindu castes, it is stated that "a widow becoming a Sati, without children, may give away all her husband's property," 6 and in another place it is even more broadly stated that "a widow about to become a Sati is entitled to give away all her husband's property."7

extended by practice, if not precept.

<sup>&</sup>lt;sup>2</sup> In several publications the woman has been described as placing herself on the pile before it be lighted; but the ritual quoted is conformable to the text of the Bhágavata.

Annals of Rajasthan, Vol. I,

р. 668.

<sup>&</sup>lt;sup>8</sup> Vol. I, p. 122.

<sup>&</sup>lt;sup>4</sup> Vide Tod's Rajasthan, Vol. I, p. 668.

Tod's Rajasthan, Vol. II, p. 132.

<sup>6</sup> p. 232.

<sup>7</sup> p. 174.

## CHAPTER VII.

(Lecture VII.)

On Property Dedicated for, or Subject to, Pious Uses.

PROPERTY WHOLLY DEDICATED: the origin of the principle of impartibility, 1.—Decisions: Elder widow of Raja Chutter Sein v. Younger widow of Raja Chutter Sein, 2; Rajender Dutt v. Sham Chand Mitter, 3.—PRIVATE PROPERTY PARTLY SUBJECT TO PIOUS USES: alienable and partible, 4. - Decisions: a property not wholly dedicated, partible subject to the trust, -Sonatun Byrack v. Sreemutty Juggut Soondree Dossee, 5; property not wholly endowed, alienable subject to the trust,-Futtoo Bibi v. Bhurrut Lal Bhukut, 6; Basoo Dhul v. Kishen Chunder Geer Gossain, 7; joint property, not actually dedicated to an idol, but held subject to a trust in its favour. partible,-Ram Coomar Paul v. Jogender Nath Paul, 8.-Property. not wholly debutter, is subject to the law against perpetuities and liable to be attached and sold in execution; Ashutosh Dutt v. Doorga Churn Chatterjee, 9.

Property dedicated for pious uses has been made Property impartible under the Hindu law, as much, I believe, from wholly dedithe fundamental idea of its not being private property as from a desire to maintain the uninterrupted use of the same for the pious purposes. Gautama in his Institutes Authorities on (XXVIII, 46)1 declares that "property destined for pious impartibility. uses or sacrifices" shall not be divided. Catyayana in a text quoted in the Digest<sup>2</sup> (Book V, Chap. V, Sec. 2, v. 365) enumerates "property which has been appropriated to religious uses" amongst the impartible things. A text of Vyása, quoted in Davabhaga, Chap. VI, Sec. 2, cl. 25,

<sup>&</sup>lt;sup>1</sup> Sacred Books of the East, Vol. II, p. 306. (Also Sup. 48 of MSS., Chap. II).

Colebrooke's Digest, Vol. II, p. 471.

Ydjyam.

declares and as one of the things not liable to partition. Jimutavahana explains बाबो to mean बानवानं देवता वा either a place where sacrifices are performed, i.e., the Yajna-sálá or hall of sacrifice of ancient times, or else an idol. The text is also quoted by Jagannatha in his Digest, Book V, Chap. V, Sec. 2, v. 364, where the same interpretation is followed. The same text is quoted in the Mitakshara, Chap. I, Sec. 4, cl. 26, as a text of Usanas, and in cl. 27. Vijnanashwara interprets the word याचां as বাৰৰভা sacrificial gains acquired by officiating at religious A similar conflict exists as to the true interceremonies. pretation of the words बोबचे ने प्रचार in Menu, IX, 219, in the enumeration of impartible things. Jimutavahana quotes this text as of Menu and Vishnu in Dayabhaga, Chap. VI, Sec. 2, cl. 23, and in cl. 24, interprets those words to mean म्यायनभोजनाचमनास्पय्क्षभोजनादौनि "furniture for repose or for meals—beds, and vessels used for eating and sipping (or drinking) and similar purposes"—in which sense that sloka would have nothing to do with our subject. interpretation favoured by the Ratnacara and Kulluka Bhatta makes the words mean "family priests or spiritual counsellors and the road by which cattle pass,"2 which is equally irrelevant for our present purposes. The meaning with which we are concerned is given in Mitakshara, Chap. I, Sec. 4, cl. 23, and the same texts are quoted and the interpretation repeated in the Vira Mitrodaya, Chap. VII, Sec. 2. I will read from Babu Golap Chandra Sirkar's translation of the latter work (p. 249) which seems to be more accurate than Colebrooke's translation of the corresponding passage in the Mitakshara: -

Yoga-kshemapracháram,

Yoga-kshemam.

as explained in Mitakshara.

> "Other kinds of property not liable to partition are mentioned by Manu thus: 'clothes, vehicles, ornaments,

<sup>&</sup>lt;sup>1</sup> Colebooke's Digest, Vol. II, p. 470.

<sup>&</sup>lt;sup>5</sup> Digest, Vol. II, p. 470, and Kulluka's Commentary.

prepared food, water, women, religious fund and charitable works (yoga-kshemam), as well as a passage are declared to be not liable to partition.'

"The term 'religious fund' (yoga) means a fund for the performance of religious ceremonies; and 'charitable work' (kshemam) signifies a reservoir of water, or the like, constructed for public benefit. The impartibility of these two, though raised or made at the charge of the paternal property, are set forth as examples: since, directly or indirectly, a partition of these is not possible. far less when these are hereditary. Accordingly, Langakshi declares,—'The sages declare that charitable work is a reservoir of water or the like constructed for public good, and that religious fund is property set apart for the performance of religious rites: these two are pronounced impartible: so are the bed and the seat.' Some hold, that the term yoga-kshema intend those who perform sacrifices and charitable works, as the king's minister (of charitable works), the (family) priest, and the like. Others say that it signifies weapons, cow-tails, shoes and similar things.

- "'A passage' is a way for ingress and egress to Pracharam. and from a house, garden or the like; this also is impartible."
- 2. In the early case of the Elder widow of Raja Dewuttor lands Chutter Sein v. the Younger widow of Raja Chutter Sein dedicated to two idols may (1 Select Rep. old ed., p. 180) it was decided by the Sudder be separated; Dewanny Adawlut of Calcutta, acting on the Vyavastha of their Pundits, that although dewuttor lands were not hereditable property, but only the management of them for religious purposes was hereditable, where lands had been endowed to two idols, it was lawful for the heirs of the original founder to form distinct establishments by mutual consent, and after such division, one heir could not claim to though imparparticipate in another's affairs. The above case assumes rily.

the position that ordinarily dewattor property is not partible amongst those interested in the worship.

Rajender Dutt v. Sham Chand Mitter.

3. In the case of Rajender Dutt v. Sham Chand Mitter<sup>1</sup> the family dwelling-house had been absolutely and validly given to the idol, the donor's sons being appointed managers, a suit by one of the heirs for the partition of the said house was dismissed.

Property not wholly dedicated.

4. The cases which we have hitherto considered are those of the complete transfer of property from the original proprietor to an idol: other endowment cases, howover, occur where the property is not absolutely given, but only a charge created thereupon for specified purposes. In such cases the property is both alienable and partible subject to the trust.

Sonatun Bysack

V. Sreemutty

Juggut Soondree Dossee.

5. The leading case upon this point is that of Sonatun Bysack v. Sreemutty Juggut Soondree Dossee, 8 Moore's Indian Appeals, p. 66.

Provisions of the Will. The facts of the case were: that Ramdoss Bysack, a Hindoo, by Will, gave all his moveable and immoveable property to his family idol, Sree Sreejut Esshore Muddun Mohun Thakoor which he had "established in the house and of which he" was "the malik or proprietor." After stating in his Will that he had four sons, he directed that his property should never be divided by them, their sons, or grandsons in succession, but they should enjoy "the surplus only." The Will also empowered the testator's eldest son, that he shall "as a servant of the Esshore Thakoor control over and manage the entire estate," and attend to the festivals and ceremonies of the idol, and maintain the family. The Will further directed that whatever might be the surplus, after deducting the whole of the expenditure the sum should be added to the corpus, and in the event of a disagreement

between the sons and the family, the testator directed that, after the expenses attending the estate, the idol, and the maintenance of the members of the family, whatever net produce and surplus there might be, should be divided annually in certain proportions among the members of the family. The managership was to devolve on the death of the eldest son, upon the oldest in age of the surviving heirs; and inheritance was restricted to male issues only.

At the date of the Will, the family were joint in estate, State of profood, and worship. The accumulations of the income were divided as directed by the Will.

One of the four sons of the testator died, leaving three and family. sons, one of whom Hurrymohan, also died without a issue, leaving a widow. The family had remained undivided in estate, food and worship up to the death of Hurrymohan. His widow sued for a life interest in her husband's share suit by widow. of the property, and for a suitable maintenance if it was held that her husband's interest in the property had ted on his death. She contended that the disposal Her contenof the testator's moveable and immoveable property to the ide was void, and that the restriction upon alienation was also void, as tending to create a perpetuity; and lastly, "that having regard to the whole of the Will, the trust, if any, in favour of the idol, could only be construed as a trust to the extent of what is sufficient Seeking partito keep up the worship of the idol in a proper and portionment becoming manner, having regard to the position of the idol's service. testator's family." She therefore prayed for a partition of the estate and also for an account of what amount of property was required to be set aside and appropriated for the due performance of the worship of the idol.

On appeal from the decretal order of the Supreme Privy Council Court, the Privy Council by their judgment held that judgment. "although the Will purports to begin with an absolute gift

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in favour of the idol, it is plain, that the testator contemplated that there was to be some distribution of the Dedication not property according as events migh turnt out." From the directions in the Will as to the accumulation of the surplus from the testator's provision "for whatever surplus should remain out of the interest of the property, the expenses of the idol being first deducted," and from "looking at the expenses of the idol, it was plain to their Lordships that the bequest to the idol was not an absolute gift.

Gift to sons subject to charge of idol's service.

absolute.

The judgment also declared that the bequest was "to be construed as a gift to the testator's four sons and their offsprings in the male line, as a joint family, so long as the family remained joint, and that the four sons were entitled to the surplus of the property, after providing for the performance of the ceremonies and festivals of the idol, and the provisions in the Will for maintenance;" and it was further said in this connection that the extent of the testamentary power of the Hindoos must be regulated by the Hindoo law.

Testamentary power of Hindoos

Family undivided.

It was also declared that the fact of the division of the income arising out of the testator's estate among the members of the family after the testator's death did not constitute a division of the family.

Shares heritable and descendible.

By a true construction of the Will, by considering the family as a joint and undivided family, and the testator baving intended that the property should pass from his four sons to their sons and to their grandsons, their Lordships arrived to the conclusion that Hurrymohan came into his share on the death of his father. "It is a share of the property of the joint family, descendible, therefore to the heir to whom that property would go in the absence of any provision made in the Will." The consequence was, this share descended to his heir, his

widow, so far as she was entitled to her widow's estate:

In this case, she was entitled to a third share of a fourth part of the property and accumulation, without prejudice to her rights as a Hindoo widow "when the joint family conclusion. shall be separated." It will thus be seen that, in the opinion of the Privy Council, such a property was partible, subject to the trust.

- 6. In the case of Futtoo Bibi v. Bhurrut Lal Bhukut, Futtoo Bibi v. the property in question was some land subject to the Bhukut. Trust of keeping up a peer's tomb. It did not appear that the whole of the profits arising from it was devoted property not to religious purposes. It was not therefore an absolute waff. It rather appeared to be a heritable estate burdened with the abovementioned trust. Therefore, following some decisions of the Sudder Dewanny Adawlut, it was Alienable held that this land being a heritable property burdened trust. with a trust, it may be alienated subject to the trust.
- 7. The decision in the last mentioned case and the deci-Basso Dhul v. Kishen Chunde sions of the Sudder Dewanny Adawlut, referred to above, Geer Gouain. were followed also in the case of Basso Dhul v. Kishen Chunder Geer Gossain. In this case, the plaintiff, Kishen Chunder, sued to set aside the sale of some lands by his spiritual father, Bhoobunessur Gossain, on the ground that they were dedicated for the food of the idol Juggernath and for other religious purposes, and that the sale of them under such circumstances was illegal.

The defence was that the sale was not illegal; for, the Property property so sold was not wholly endowed for religious wholly purposes. The evidence showed that the whole of the profits derivable from the property were not dedicated for religious purposes. A certain sum of money was charged on the land annually for a certain religious purpose, but

<sup>1 10</sup> W. R., p. 299.

S. D. A. Reports of 1858, pp. 586, 1028 and 1218.

<sup>\* 13</sup> W. R., p. 200.

the remainder of the profits was left in the hands of the Gossain to be employed either for his own purposes or for charitable purposes, as he should consider fit.

Held alienable subject to the charge.

Jackson, J., in holding that the sale was good, made the following observations: "The distinction as regards the power to sell such property seems to turn upon the point whether the property is wholly dedicated to religious purposes, or whether a certain portion of its profits only are charged for such purposes. The precedents quoted from Marshall's Reports, p. 303,1 and the Weekly Reporter, Vol. X, 299, and the cases from the late Sudder Dewanny Adawlut Reports mentioned in the last of the three decisions, distinctly lay down the ruling that, although a certain property is burdened with the payment of a certain charge, it does not follow that the property cannot be sold. The sale of such property is subject to the charge or lien which was originally imposed upon it. The decisions which are quoted on the other side are cases where the whole of the property has been endowed and not only a portion of it."

Ram Coomar Paul v. Jogender Nath Paul.

Ijmales property subject to idol's service. 8. Another case of this class is that of Ram Coomar Paul v. Jugender Nath Paul.<sup>2</sup> In this case the suit was brought for a partition. "The plaint stated that the common ancestor of the plaintiff and the defendant and his five sons acquired certain properties; that, on the death of the ancestor, his five sons separated among themselves, and each took a certain share (16 bighas) of lands for his own expenses, and the remaining portion of the lands they held in ijmalee among themselves; that one of them became the manager of this portion of the lands, made the collection of the rents, and from the profits thereof paid the expenses of the Rash, Dole, etc., festivals and the

¹ Jadubindu Odhikares v. Lokenath Gires & others.

<sup>&</sup>lt;sup>2</sup> I. L. R., 4 Cal., p. 56.

worship of the Debta, -all of which are patrimonial; and that the balance of the money they divided among themselves. The defence substantially was, that the whole of contention It was belonged the ijmalee land was the property of the idol. found in the lower Court that a certain portion of the land (94 bighas and 6 cottahs) was dewuttor and not partible, and a decree was made for a partition of the remainder."

The High Court, on appeal, held that it was not shewn Dedication no that this latter portion of the property had been trans-proved. ferred from the family and dedicated to the idol. case was remanded to the lower Court for the determination of this point, and it was directed that "if they (i.e., the lands other than the dewuttor land 94 bighas and 6 cottahs and the bhatee land 80 bighas) were dedicated to the idol and ceased to be the property of the family, except otherwise than as representing the idol, then these lands are not partible. On the other hand, if he finds that they Question of imremained as the property of the several members of the partibility dependent on family subject to a trust in favour of the idol, and that only proof of dedication. the profits of these lands were dedicated to the worship of the idol and the surplus-proceeds were distributed among the members themselves, then the decree (for partition) will stand."

Markby, J., in the course of delivering the judgment in Remarks by this case, observed: "The case is somewhat like the case of Sonatun Bysack. There the Will begins with this statement that the property was given to the idol; but nevertheless, relying mainly upon a subsequent clause in the Will, by which it was declared that the members of the family of the testator should have an interest in the surplus, the Privy Council came to the conclusion that the

Question of intention.

property remained in the family and was not transferred to the idol, and that it was only subject to a trust in favour of the idol. It is argued here, and we think correctly, that all these cases must depend upon the intention of the parties. Nevertheless, this judgment of the Privy Council is a guide to us as to what our decision ought to be in this case; and it seems to me clearly to indicate that we should be going considerably beyond what the plaintiff states in the plaint, if we were to say that it contains an admission that this land is the property of the I also think it clear upon the decisions that, unless the property is transferred from the family and dedicated to the idol, the partition ought to take place. There may be some inconvenience in carrying on the worship of the idol, should the property be partitioned; but nevertheless partition is an incident of property in this country, and if the property is the property of the several members of the family and has not been actually dedicated to the idol, I think that the authorities show that the several members have a right to partition. A strong case in favour of the right to partition is that of Radha Mohan Mundul v. Jadoomonee Dasee1, where the claimant of a share admitted that the property was in a sense dewuttor property. She claimed. nevertheless, that as sebait she had a right to a separate share of the dewattor property. Here the property could scarcely be called dewuttor property at all. It is, as in the case of Sonatun Bysack,2 the private property of the family, subject only to a trust in favour of the idol. Therefore, upon the fact as found by the lower Court below, I think that the decree for a partition was right."

proper where no actual transfer to idol.

Partition

Reference to Radha Mohan Mundul v. Jadoomonee Dassee.

Ashutosh Dutt v. Doorga Churn Chatterjee. 9. One more important case of this class is the Privy Council case of Ashutosh Dutt v. Doorga Churn Chatter-

jee. The facts of the case are that Saraswati Debi, a Hindoo lady, left by Will to her three sons (Doorga Churn, Shama Churn, and Bhogobuti Churn) a taluk belonging to her to support the daily worship of an idol (Eshore Taluk be-Thakoor Raj Rajeshwar), and to defray the expenses of idol's service certain other religious ceremonies (as the parbans of Dole interest to Jattra, Rash Jattra, &c.), with a provision that, in the family. event of there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family. At the same time the Will also directed that "beyond performing the aforesaid worship of the Deb, and the ceremonies and • poojas, none of my heirs shall have any interest in or Directions in profit from my property. And they will have no power inggift or sale, of gift or sale over it. And it will not be attached or &c. sold on account of their debts."

The appellant, Ashutosh Dutt, obtained a money-decree Attachment against Doorga Churn Chatterjee, the respondent, and in decree. execution attached one-third share of the above taluk. Thereupon Doorga Churn and his brother Shama Churn Judgmentintervened, alleging the dewattor character of property contention. under the abovementioned Will, and contended its liability to be sold for the private debts of Doorga Churn.

The decree-holder contended that the Will was not Judgmentgenuine, and even if genuine that the alleged endowment contentions. of the idol was a mere device, whereby Saraswati intended to secure the taluk in question to her sons clear of liability for their debts, and was invalid as contrary to the law against perpetuities. And it was also contended that Doorga Churn had a considerable beneficial interest in the property.

Both the lower Court and the High Court held that the Will was genuine and bond fide, and that the property was

<sup>&</sup>lt;sup>1</sup> I. L. R., 5 Cal., 438.

dewuttor, and not liable to be attached or sold for a private debt.

Privy Council held, property not wholly descuttor. On appeal to the Privy Council, it was held that, according to the construction which their Lordships put upon the Will, the property could not be said to be wholly dewattor. "They consider, that it created a charge upon the property for the expenses of the daily worship of the idol, as it was performed at the time of the death of the testatrix, and of the poojas, shradhs, and religious ceremonies for which provision is made in the Will. For the purpose of this decision the charge may be termed generally a charge for such religious acts and ceremonies. So far the case falls within the class of which that of Sonatun Bysack v. Sreemutty Juggutsoondry Dosseel may be referred to as an example."

Case of Sonatun Bysack followed.

Nature of the bequest of surplus.

According to the opinion of their Lordships, the provision of applying the surplus income to the support of the family, amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and ceremonial trusts, might be considerable, and could not be presumed to be valueless.

Prohibition of gift or sale inoperative. It was also held, that directions given by the testatrix in her Will to the effect, that her heirs should have no power of gift or sale over the property bequeathed, and that it should not be attached or sold on account of their debts, being inconsistent with the interest actually given, were wholly beyond her power, and must be rejected as having no operation.

Conclusion.

The property was consequently held to be liable to attachment and sale in execution.

<sup>&</sup>lt;sup>1</sup> 8 Moore's I. A., p. 66.

## "PURTTA."

## CHAPTER VIII.

(Lecture X.)

On the Institution of Tanks and Wells.

Enumeration of PURITA works, 1; classification of wells, 2; embanked reservoirs, 3; classification of tanks, 4.—Additional texts extolling MERIT of constructing Purtta works, 5; equal merit of repairing, 6.—RULES OF CONSTRUCTION: location of wells, 7; their size and shape, 8; rule for embanked ponds, 9.—CEREMONIES OF CONSE-CRATION: Time for commencement or consecration, 10; the Sankalpa, 11; the ritual as in Bahwricha, 12; as in Ashwalayana: punyáha-vá-chana and Vástu-yága, 13; subsequent ceremonies, 14; the worship in the Mandapa, 15; the same as in Matsyapurána, 16; Varuna, the apparent presiding deity, 17; pratishthá of his image, 18; the milky tree, 19; the Yupa or sacrificial post, 20. The santi, 21; substances used in Sánti-kalasa, 22. The special ceremony of crossing by a cow, as prescribed by Bahuricha, 23; by Ashwalayana, 24; by Kapila, 25; by Hayasirsha, 26; the cow to be given away, 27.-Throwing effigies of aquatic animals into the water, 28.-Formula of dedication, 29.—Concluding ceremonies: throwing of pancha-gabya, feasting Brahmans and presenting offerings to them, 30.—Further ceremonies in case of tanks: the installation of Nágayashti or the serpent rod, 31.—The finale, 32.—Effect of dedication; Legal consequences, 33; use by dedicator prohibited, 34; dedicator's right in subsoil, &c., 35; his right to repair and control, 36; prohibition of bathing in tank excavated by another, 37; effect of dedicator's low caste, 38.—Rules for PRESERVATION of tanks, 39.— Sale prohibited, 40.-Jalsasum tenure, 41; free gift of land for tanks and wells, 42.—Decisions of the Calcutta High Court, 43:—Hurnarain Gosain v. Shambhoo Nath Mundal, ib. (1); Puzeeruddeen v. Mudoosoodun Pal Chowdhury, ib. (2); Jadoonath Sircar v. Banumali Sircar, ib. (3); Chunder Kant Chuckerbutty v. Bunko Behary Chunder, ib. (4); Muhamed Akel v. Asudunnisa Bibee, ib. (5); Bengal Coal Co. v. Hurdayal Marwari, ib. (6).—SEC. 37 of ACT XI of 1859, 44.

1. We have seen before that the construction of re-Construction of reservoirs, a servoirs of water is classed by the Hindu sages amongst charitable work.

<sup>&</sup>lt;sup>1</sup> Ante, Lecture I, p. 27.

Enumeration of reservoirs.

purtta or charitable works. The most common enumeration of these reservoirs is vapi-kupa-tarhagáni, a phrase occurring in the texts of Yama, Atri, Játukarna and the Varáha Purána already quoted in the same connection. In the earlier literature of the Parishishtas the same enumeration occurs; the Ashwaláyana Grihya Parishishta introducing this subject as vápádi vidhi, 'sules relation to vápis and the rest,' which is amplified in the Bahwricha Grihya Parishishta which speaks of vapi-kupa-tarhagayajnam in the same connection. Pushkarinis are mentioned in a text of Vyása already cited, and all four are mentioned in a text of the Matsya Purána. This, however, does not exhaust the enumeration, as will be seen below.

Wells, classification of. 2. Wells are divided by the Hindu writers into two classes, namely kupa and vápi. The kuva is the ordinary excavated well, the kuá of Bengal and Hindusthan. The vapi is a well with a flight of stairs leading thereto, the baoli of Upper India. The distinction between the two is thus set out in the Dvaitanirnaya. "The kupa is a hole without a door; the vápi is the same built with stairs." The latter word is also used in another sense as will appear below.

Embanked reservoirs. 3. Embanked reservoirs are mentioned in the Aditya Purána under the name of setu-bandhas.<sup>7</sup> The water in the slopes of hills or in declivities is retained by the erection of mounds or embankments, and in Western Bengal they are commonly known as bandhs, the same word denoting the bund as well as the reservoir.

<sup>&</sup>lt;sup>1</sup> Ante, Lecture I, p. 26.

<sup>\*</sup> चय वाष्यादिविधिः। IV, 9, Bib. Ind., p. 342.

<sup>\*</sup> Quoted in जसाम्योत्स्र में तर्ज p. 509.

<sup>&</sup>lt;sup>4</sup> Ante, Lecture I, p. 26.

<sup>&</sup>lt;sup>5</sup> Quoted in **जसाय्योत्स्र ते तस्त्रं** p. 505.

<sup>्</sup>र भूपीऽद्वारको बन्नेविश्वेचः । वद्वसीपान कोऽधं वापौति देतनिवंदः। जसाम्योत्सर्गतकं p. 505.

¹ Quoted in जन्नाम्योत्स्मेत्रकं p. 505. *Cf.* Ghosha's *Durga Puja*, note 39, pages li-lii.

4. Tanks are variously classified according to size, as Tanks, classipushkarini, dirghik, drona, tarhága, vápi, sarovara and fication of. According to Vashishtthal a tank up to four hundered cubits (in perimeter) is a pushkarini, up to twelve hundred cubits, a dirghiká, up to sixteen hundred a drona, up to two thousand a tarhaga, and up to sixteen thousand cubits a vapi. Vrihaspati 2 classifies reservoirs into vapi pushkarini, sarovara and ságara according to their size being one hundred, two hundred, three hundred, or upwards respectively. Some of the names still survive in the vernacular languages. Pushkarini or its abbreviation pushkarni is the common name for a tank in the Bengali language, which is also the same as the Bengali pukhur, and the Hindi pokhur. Dirghiká derived from the root diraha (long) survives as dighi in Bengali and is used in the same sense. I am not sure whether the Hindi táláb and tál have any connection with the Sanskrit tarhága, but sagar and its synonym samudra (vulg. samundar) are still used in the old sense, and the Bengali sair, which is only the decayed form of the Sanskrit ságara, is also so used.

As to the religious merit to be acquired by construct-Religious ing these water-reservoirs which are known by the generic merits acquired by constructname of jalásaya, we have the following special texts in ing reservoirs. addition to those already cited (supra, Chap. I, sec. 24) proclaiming the reward of purtta works in general. Ashwalayana Grihya Parishishta declares the merit flowing Ashwalayana from water standing in an endowed reservoir in the six shishta. seasons, spring, summer, rains, &c., to be equal to that

## होमाक्यावाजपैयातिरावपासिति॥

See these paraphrased in the texts of Mahábharata, and Vishnu Dharmottara quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., pp. 1005-1006, and p. 1006 respectively.

<sup>\*</sup> Texts quoted in जलाश्वोत्स-मे **नर्ख** p. 505.

P Quoted in जासामयोतार्थे तसं p. 510.

IV, 9 Bib. Ind., p. 343.

वसमयीयावर्षाभ्रद्धेनमाभ्रिभिरेष् वकासं विद्यातसम्बर्भे धराजवाद्याचि-

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derived respectively from the performance of the Ashwamedha, Rájasuya, Agnishtoma, Ukthya, Vájapeya and Atirátra sacrifices.

Vishnu Dhar-, mottara.

Vishnu Dharmottara.\(^1\)—"As there is no sustaining of life in both worlds, without water, consequently the wise man should always construct reservoirs of water. A well is equal to the Agnishtoma sacrifice, in a discret it equals the Ashwamedha. The well flowing with drinking water destroys all sins. The well-maker, attaining heaven, enjoys all pleasures."

Skanda Purána. Skanda Purána.<sup>2</sup>—"The man who makes a beauteous well, full of water, and bestows the same, adorned with eight variegated banners upon worthy Brahmins after having feasted them, rescues (from hell) fifty generations of ancestors and sojourns to the mansions of Varuna, accompanied by the melodious song of heavenly nymphs."

Nandi Purána.

Nandi Purána. He who digs a bowli or well in a place destitute of water, attains heaven for a hundred years for every drop (of water contained therein). His resemblance to the gods is complete as he is ever free from hunger and thirst."

Vishnu Dharmottara. Vishnu Dharmottara. —The makers of reservoirs do not see the mansions of Yama; hence a man should make a beautiful well with care; and a bowli is equal to ten wells."

Vishnu.

Vishnu.<sup>5</sup>—"Half the sins of a well-maker are destroyed in the drinking water issuing therefrom. The maker of a large tank, ever satisfied, attains the abode of Varuna."

<sup>&</sup>lt;sup>1</sup> Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1001.

Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1002.

Quoted in Hemadri, Danakhanda, Adhy. 13, Bib Ind., p.

<sup>1002;</sup> the first portion is quoted in जाना स्योत्स्रोपकति, p. 505.

Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1003.
 Quoted in Hemadri, Danakhanda, Adhy. 13, Bib., Ind., p. 1002; the first portion is quoted in जवामणोद्धां प्रवित, p. 505.

The Vishnu Dharmottara.1—"Promises heaven to the Vishnu Dharmottara.1 Dharmottara.1 Dharmottara.2 Dharmottara.2

"Aditya Purána.2—" Those who devote themselves to Aditya the construction of bandhs, the cleansing of gháts, the Parana construction of tanks and wells, are released from all fear of thirst (in the next life)."

Vishnu Dharmottara.8—\* The makers of water-reser-Vishnu voirs do not see the abode of Yama, therefore should a person (desirous of such result) carefully construct a well. of beautiful shape; and similarly (the construction of one baoli is equal to (that of) ten wells."

Nandi Purána.—" He who establishes a baoli accord-Nandi ing to rule, in the presence of fire, and having worshipped with faith the four oceans in the water-jars placed in the (four corners), has made the gift of the earth up to the end of the four quarters. Having duly worshipped Brahmins in its proximity, with food and drink, he sojourns to the mansions of Varuna, blessed with fulfilment of excellent desires."

Yama.<sup>5</sup>—"The man in whose tank there is a peren-Yama. nial supply of water obtains the passage of heaven, there can be no doubt in this. The maker of a tank dwells in heaven for four yugas. The man who makes a tank in which at any time a Bráhmin or a cow has taken a drink dwells in heaven for ten yugas."

Mahábhárata.6—" The gods, men, deceased ancestors, Mahábhárata. gandharvas, serpents, rákshasas, and plants take the shelter

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<sup>&</sup>lt;sup>1</sup> तझामकूपकर्तारः + + + + ते नरा खगेगामिनः॥ Quoted in जसाययोखनेतसं, p. 505.

Quoted in Hemadri, Danakhanda, Adhy. 12, Bib. Ind., p. 1002; also

quoted in जसामयोत्सर्गेतचं, p. 505. • Quoted in Hemadri, Dana-

khanda, Adhy. 13, Bib. Ind., p. 1003.

<sup>\*</sup> Quoted in Hemadri, Danakhanda, Adhy. 13, p. 1004.

<sup>&</sup>lt;sup>5</sup> Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1005.

Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1005.

of a reservoir of water. All the progenitors of a man obtain salvation who excavates a reservoir in which cows and good men always drink water. The man in whose tank, cows, other quadrupeds, birds and human beings are relieved of thirst by drinking, obtains the reward of the Ashwamedha. What they drink, what they bathe, and what they rest, all that conduces to endless rewards in the next world for the maker of the tank."

Vishnu Dharmottara.

Vishnu Dharmottara.1-- "The maker of a tank attains the abode of Varuna for ten thousand years or for a kalpa; he acquires even greater religious merit by making it on a The maker of a tank full of water in a desert attains the abode of Brahmá seated on a car resplendent He who makes a stream for irrigation, becomes the bestower of food, drink and life, and doubtless reaches the By making abode of Bhagiratha. · a water-pipe (pranála) he acquires great religious merit The wise man who excavates a and is exalted in heaven. tank with his own hands obtains the same reward as the performer of the Rájasuya and Aswamedha sacrifices. He who is the maker of a reservoir of water participates in the fruit of all acts productive of religious merit which are performed there by other persons."

Merit of repairing old tanks. • 6. As in the case of temples, high rewards are promised not only for the construction of new, but also for the repairs of old, ones.

Vishnu.

Vishnu.2—" In wells, groves, tanks and temples for the gods, the man who repairs them afresh has the same reward as the original maker."

khanda, Adhy. 13, Bib. II

<sup>&</sup>lt;sup>2</sup> Quoted in Hemadri, Danakhanda, Adhy, 13, pp. 1006-1007.

khanda, Adhy. 13, pp. 1006-1007. p. 1003; also quoted in अस्।

\* Quoted in Hemadri, Danaस्रोतसं, p. 505.

7. As to location, the Devi Puránal enjoins the location Rales for of wells to the east or north, and Varáha Mihira lays wells. Varáha down the following rules on the same subject:—

"A well being situated in the south-east of a village or town is likely to occasion constant danger from fire and men. A well in the south-west causes loss of children, and one in the north-west threatens the wife. Wells in any other direction (except these three) are productive of good."<sup>2</sup>

- 8. As to size and shape, according to the Devi Purána, Their size and the depth of a well should exceed five cubits and upwards, Purána. and a round shape is auspicious. Garga is of opinion that a well should be from more than five cubits to twenty-five cubits in depth and of a circular shape.
- 9. The following rules, with reference to embanked Rules for embanked ponds, are laid down by Varáha Mihira<sup>5</sup>:—

  \*\*Mihira\*\*
  \*\*Mihir

"A pond extending in a direction from east to west retains the water much longer than one running from north to south, because the latter is more often exposed to rupture by the agency of billows roused by the wind. Let him who wishes to make such a pond stem the conflux of water by means of strong timber, or make the dams on every side from stones and the like, the soil being rendered hard by trampling of elephants, horses, &c.

"The banks must be shaded by Terminalia Arjuna, banyan, mango, wavy-leaved fig, Nancha kadamba, along

Danakhanda, Adhy. 13, p. 1004.

<sup>&</sup>lt;sup>1</sup> Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1003.

<sup>&</sup>lt;sup>2</sup> Brihat Samhita, Adhy. 54, sls. 97-98, Bib. Ind., p. 297.

J. R. A. S. N. S., Vol. VI, pp. 308-309.

क्ष्मः पश्चकराष्ट्रें क्रूपो एतः ग्रुभावनः। quoted in Hemadri,

Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1003.\*

<sup>Brihat Samhita, Adhy. 54,
sls. 118—120, Bib. Ind., p. 301.
J. R. A. S., N. S., Vol. VI,
p. 311.</sup> 

with Barringtonia, rose-apple, rotang, Nancha Nipa, Barleria, tâl, Acoka and Bassia, intermingled with Bakula.

"On one side let a flood-gate be made, in such a manner that the passage be built with stones, and let a pannel without fissures be fixed in a frame, and covered by grit heaped up against it."

Time for commencement. 10. The auspicious times for commencing or consecrating water reservoirs are the same as those laid down for houses, temples and images. They need not therefore be repeated here.

The sankalpa.

11. The sankalpa for a pratishtthá of the present nature should, according to Raghunandana, recite as the reward for the execution of the proposed work the maker's stay in heaven for one thousand years for every drop of water accumulated therein. Hemadri directs the sankalpa to be performed the day before the consecration ceremony, as also the performance of the vriddhi shraddha and the svasti vachana.

The ritual as given in Bahv-richa Grihya Parishishta,

12. The ceremony of consecration is a very short one as described in the Bahvricha Grihya Parishishta. On an auspicious day the worshipper sets up fire altars near the reservoir, selecting ground which may slope to east or north; oblations with appropriate mantras are offered to the water-god, Varuna, and then a cow is made to enter the excavation of the reservoir, the worshipper holding the tail, and the priest bringing up the rear of the procession. The cow is made to come out in the north-east corner, certain texts being recited during the journey. If she makes a sound during the journey, then other texts are to be recited. Afterwards the cow properly adorned

<sup>&#</sup>x27; জন্তাম্থীন্তের্গনন্ত, p. 505. • Quoted in জন্তাম্থীন্তের্গনন্ত, • Danakhanda, Adhy. 13, Bib. p. 509. Ind., p. 1016.

is to be bestowed on a Sámavedi or other Bráhmin, and a present made to the Acharya, or officiating priest, according to the worshipper's competence. The dedication is then to be made by the formula: May the gods, the pitris and human beings be gratified. It is specially added on the authority of Saunaka that the worshipper should then feast the Bráhmins and cause them to recite blessings.

In the Grihya Parishishta of Ashwalayanal the The ceremony ceremony is described with greater elaboration. The wor-as described in Grihva shipper goes to a clean and pure place draining to the Parishishta. east or north, and there to perform the ceremonies of punyáha vachana and vastu puja. Necessarily the site must be close to the reservoir constructed or proposed to be constructed. Hemadri 2 too directs the performance of the vastu yága on such an occasion, and so does Raghunandana, according to which latter authority the vastu yága should be performed on the day of the consecration.

14. According to the Ashwalayana Grihya Parishishta, Subsequent the performance of the vastu yága is followed by the appointment of priests, the preparation of fire pits and mandapas as already described for the pratishtthá of images, and these directions are followed by later authorities.

15. Ashwalayana directs the priest to enter the man-The worship dapa with the worshipper placing the milky-tree in its in the manfront, and to worship in the inside the golden images of Brahmá, Vishnu Isa and their wives, as also of Vináyaka, placed in a mandala or mystic circle. He also mentions Effigies of golden effigies of aquatic animals to be placed around animals,

<sup>&</sup>lt;sup>1</sup> IV, 9, Bib. Ind., p. 342. Danakhanda, Adhy. 13, Bib.

<sup>4</sup> Ashwaláyana, IV, 9, Ind., p. 342. • IV, 9, Bib. Ind., p. 343.

Ind., p. 1016. जलामयोत्पर्गतत्त्वं, p. 505.

the divine images. Kalasar or water-pots filled with riverwater, and auspicious substances and adorned with cloths, &c., are to be placed in four corners of the mandapa and worshipped.

The same as in Matsya Purána.

16. The representation of the aquatic animals is thus developed in the Matsya Purána, a tortoise and shark of gold, a fish and water-snake of silver, a crab and frog of copper, and a porpoise of iron. In the same work the worshipper is directed to enter the mandapa by the western door, after having been bathed in auspicious water by Bráhmins learned in the Veda, bearing white garlands and garments, smeared with white unguents, accompanied by his wife and issue.

Varuna the presiding deity.

17. The Yajna for fire-sacrifice offered in the mandapa is appropriately one in honour of Varuna, the water-god. In the Satapatha Bráhmana<sup>2</sup> the brightly burning fire is designated Varuna, and according to the Matsya Purána<sup>3</sup> the fire invoked on the occasion is that known by the name of Varuna.

Pratishttha of his image.

18. The earlier ritual confined the worship of Varuna to the aforesaid Yagna, but in the Hayasirsha Pancharátra<sup>4</sup> a development is introduced in the shape of the pratishtthá of an image of the water-god and his family within the reservoir.

The milky-

19. The milky-tree which Ashwaláyana directs to be planted before the mandapa would most naturally be a branch of one of the trees of that description. The milky-trees mean literally trees exuding thick sap like

¹ Quoted in Hemadri, Danakhanda, Adhy. 13, Bib. Ind., p. 1017; also quoted in ज्ञा-स्थोत्स्रजेवचं, p. 507.

<sup>&</sup>lt;sup>2</sup> II, 3, 2, 10. Sacred Books of the East, Vol. XII, p. 340.

<sup>•</sup> जलाभयप्रतिष्ठायां नद्दः ससुदाद्वतः। Quoted in जला-भयोत्प्रकृतन्त्रं, p. 509. • Quoted in जलाभयोत्पर्कत

p. 508.

milk; but they are technically understood the four holy fig trees, ashwattha, &c., which have been previously recommended for the archways of the mandapa.

In the Kapila Pancharátra, it is recommended The yapa or that the yúpa or sacrificial post (figured like a serpent) in the Kapila should be placed to the north-east of the reservoir, five cubits distant from the excavation. The Matsya Purána<sup>2</sup> The same in declares that the yupa should be made of the wood of a Purana. milky tree and three cubits high, or it might be made equal in height to the worshipper.

The completion of the Varuna Yajna is marked in The santi. the Bahvricha Grihya Parishishta by the usual sprinkling with auspicious water. In the Ashwaláyana Grihya Parishishta we have the fuller direction that the worshipper should be bathed with the water from the sánti-kalasas,<sup>5</sup> after which the water in the jars is to be drunk by onethousand, one hundred, fifty or even one cow with calf, to the accompaniments of hymns in honour of Surya.

The substances to be used in the sánti-kalasas are substances enumerated in the Matsya Purána to be earths of the kalasas. following kind, namely, dug up by an elephant, dug up by a horse, earth from a road, from an ant-hill, from a junction of rivers, from a lake, from a cow-house and from the junction of four roads; gorochaná; white mustard seeds; guggulu; and fragrant substances; accompanied

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Quoted in असामयोत्सर्वेतर्सः,

<sup>2</sup> Quoted in जलाययोत्धर्मेतर्सं. p. 509.

P Quoted in जजाश्योत्सर्भतन्त्रं, • IV, 9, Bib. Ind., p. 343. p. 509.

<sup>&</sup>lt;sup>•</sup> Quoted in ज्ञाहाश्योत्स्रगेतस्त्र', p. 509. जनायरयावसीक्यक्रमस्द्रगोक्रसात्। सदमादाय क्रभेष प्रश्चिपेश्वतरात्रया 🛭 गोरसमानं सिदार्शन गयान् ग्रमसस्य च। खपनं तस्य कर्त्रेयं प्रमुक्त समितां ॥

Pancha pallara. usefully compared with those recommended for the purification of images in connection with their pratishtthá. The five-leaves (pancha bhanga or pancha pallava) are the leaves of the ashwattha, udumbara, plakhsha, vata and chuta.¹ The first four, sacred representatives of the fig tribe, collectively styled khsira brikshas, 'milky-trees,' we have frequently met with in connection with religious ceremonies. The fifth is the mango tree, also treated as one of great auspiciousness.

by the five-leaves. The earths described above may be

Khsira briksha.

The "Goruttarana" ceremony. 23. The ceremonies up to this stage are directed to be performed for all kinds of reservoirs. The succeeding ceremony of "Goruttarana," or causing a cow to cross the water, cannot, from the very nature of things, be performed for wells of any kind.³ The earliest available description of the ceremony is obtained from the Bahvricha Grihya Parishishta,³ where the worshipper causes a cow to enter the water, reciting a text which invokes her to purify the liquid, and holding the animal by the tip of its tail, and followed by the Acharya. He comes out in the Isana (north-east) corner (a direction sacred

As described by Bahvricha.

In Western India, it seems, the ceremony is observed in all cases by simply making the cow walk round the tank or well, as would appear from the following extract from Mandalik's Note on public charities, appended to his translation of Yajnavalkya:—

"Dharma-sindhu lays down that until the ceremony of Goruttarana (the walking of the cow round) the tank or well, including her going to drink water therein, is made and followed by the utsarga (enunciation), the water should not be used" (p. 337). But it is not easy to comprehend how a cow could go down an ordinary well to drink water therein.

<sup>े</sup> पश्चभञ्चाः मानिकपौष्टिककस्पतस्त्राः अश्वत्योषुम्बरश्चवटसूत पश्चवाः। जलामयोत्प्रमेतस्त्रं, p. 509.

<sup>&</sup>lt;sup>2</sup> एतत्पर्येन्तं ब्रूपेऽपि । जसामग्रेतस्य तत्त्वं, p. 599. एतत्पर्येन्तं ककी ब्रूपे न वायद्वयते सकावात् । जसामग्रेतस्य , p. 510.

<sup>\*</sup> Quoted in जलाम्योत्स्मेत्रज्ञं, p. 509.

to the gods, as we have already seen), invoking the cow or the earth (as typifying the same), to produce good pasture in the locality. The cow is then to be bestowed The cow on a Samavedi Brahmin, adorned with a cloth round her Samavedi neck, gold on her horns, copper on her back, silver in her hoofs, accompanied by a bull-calf and a bell-metal milking vessel.

bestowed on a

24. In the Ashwaláyana Grihya Sutra, the cow singly, or if the means of the worshipper admit, a much larger number of cows in her company, is made to drink of the Cows made to sacred water in the santi-kalasas to the recitation of hymns are water, to Surya, before entering the water, about which the additional direction is given that the entrance should be made from the nirrita (south-west) corner, which is the exact opposite of the corner at which the egress is accomplished.

In the Kápila Pancharátra, the worshipper is en- The worshipjoined to be accompanied by his wife in his journey across accompanied the water, and he is directed to cross from west to east, so that he faces east during the whole process.

The Hayasirsha Pancharátra<sup>3</sup> improves upon this The relations of the worshipby including all the relations of the worshipper in the per to accompany the procession, and by directing the ornamentation of the cow worshipper. to be made before its advent into water.

After crossing the water, the Bahvricha Grihva Parishishta directs the bestowal of the same on a qualified Bráhmin. The Kápila Pancharátra, however, requires cow to be an oblation of water from the cow's tail to be performed Brahmin. on the eastern bank in honour of the deceased ancestors of the worshippers before the cow is bestowed on the Bráhmin.

<sup>&</sup>lt;sup>1</sup> Quoted in जसाम्बोतामें तस्त्रं, Quoted in जशास्योत्सर्भतस्त्रं. p. 509.

<sup>•</sup> Quoted in जहामयोत्प्रगतचा, p. 509.

kesara, vakula, champaka, vilva or khadira. Vrihaspati,1 enjoins the rod to be impressed with the marks of chakra and trisula, a direction which may have originated with the occurrence of similar marks on the hoods of snakes, and will now be identified with the respective insignia of Vishnu and Siva. Raghunandana gives an elaborate ritual for the installation of the nága-yashti. It is washed with fragrant water, oil and turmeric, durva-grass, &c., panchámrita and fruit-water, appropriate texts being recited on each occasion; then a flag with small bells is tied to the rod; it is then worshipped with pádya, &c., ornamented with flowers, &c., and carried near the excava-The Acharya then vivifies a silver image of Varuna and throws the same into the water, followed by various purificatory substances. Then the rod is invoked by other texts and placed in the water accompanied by the mantra yúpa-briksha, &c., which serves to illustrate the connection between this nága-yashti and the yúpa of earlier literature. The rationale of the rod so placed in the water would seem to be (1) to draw the attention of passers-by to the existence of the reservoir; (2) to denote the depth of the water; (3) to sustain a tired swimmer.

Worship of female divinities, and feasting of Brahmins, &c. 32. According to Raghunandana the ceremonies conclude with the worship of the Jala Matris or certain female divinities; the circumambulation of the sacrificial fire; the worship of the thirty-gods Surya and the rest; and a parting invocation by way of apology to Varuna asking his forgiveness. After this the reservoir is circumambulated by a procession with loud music from the conch-shell and other instruments, and with a vessel pouring a continuous stream of milk. The final step,

according to Raghunandana, quoting the *Matsya Purána*<sup>1</sup> as his authority, is to feed one thousand, eight hundred, fifty or twenty Brahmins according to the means of the worshipper.

The water of a reservoir so dedicated ceases to Reservoir of be private property according to the Hindu religious idea, water so dedicated and is equally the property, not only of every human ceases to be being but of every animated being in creation. In com- perty, and becomes the menting on the text of Katyayana: "He who hires, at a property of fixed rent, a house, A POOL OF WATER, a market place or ed being. the like, shall be compelled, in a court of justice, the rent of it, until he restore it to the owner." natha<sup>2</sup> quotes the observations of the Viváda Ratnákara and the Viváda Chintámani that a pool of water in the above passage means "one made by another man, and not consecrated, but intended for use in this world;" and further proceeds to add the logical conclusion that "it appears therefore that no rent should be paid for a consecrated pool to him who made it." This extinction of the right of property in the consecrator is mentioned by Raghunandana, who is of opinion that the consecrator by relinquishing his own right makes the water of the consecrated tank common property like that of a river, &c.; this public right, however, does not arise unless the consecration has been effected with the text: "This water has been given by me to all beings in common; let all beings be satisfied by bathing, drinking and immersion." The same idea is thus alluded to by Kulluka Bhatta. Menu in his Institutes, IV, 202, prohibits the use of another person's well without his permission on penalty of being saddled with one quarter of his sins. Kulluka in com-

\* Digest, Book III, Chap. I, \* जलामयोत्मर्गतर्ख, p. 510.

Quoted in जजामयोत्सर्भतचा, sec. 2, sl. 101, Madras reprint, p. 511. Vol. II, p. 50.

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menting on the above remarks that the above prohibition does not apply to the case of a well which has been dedicated for the use of all.

The dedicator's ence of opinion.

Certain writers forbid a person to use the water use of the water. Differ- of a tank so dedicated by himself, upon the principle that a man ought not to take back what he has given Raghunandana, however, combats this opinion and permits the dedicator to use the water just as any other member of the public.

The sub-soil, and the banks remain the property of the dedicator.

35. As the dedication, however, is of the water alone for use by ablution and drinking the right of property in the sub-soil and surrounding banks would remain with the dedicator if he chose to retain the same, subject to the granting of reasonable facilities for the user of the rights granted in the water. Similarly he would retain if he chose to do so the exclusive right of property in the fish and other products of the tank. The public who obtained a right to the water could not make a destructive use of it, as by cutting the tank for purposes of irrigation which is not only outside the scope of the grant, but would altogether defeat the primary object by drying the reservoir.

Mandalik's opinion about the right to the reservoirs so dedicated.

- 36. Mandalik, writing about the utsarga ceremony in the case of tanks and wells, &c., observes, that "the repair and control of the things thus dedicated, and the ownership of which has been renounced, generally rest with the renouncer according to the usage of the country." He then quotes the following remarks of Mitra Misra from Viramitrodaya Vyavaharaddhyaya, which tend to confer on the dedicater a sort of guardianship over the thing dedicated.
- "But ownership, so far as protection is concerned, does exist in the donor even when his ownership, consisting of the power of disposition at pleasure, has been withdrawn

(by renunciation) until the final accomplishment of the purposes of the donor, who seeks a certain merit according to precepts (or gifts); for the act imported by the word gift will not be complete until the ownership of another has arisen. The ownership will in this instance (exist) in the same way as (it does in) the case of substances sacrificed, lest sin arising out of prohibitions about their being touched by prohibited (animal or person) should stick (to the sacrificer). In this way (i.e., on the above hypothesis), the possibility of a stranger appropriating (a thing given in the former case) and of the forbidding (an unclean touch) being precluded (in the latter case) will not arise, although the ownership of another (viz., the donee) has not arisen (in the thing given). practice of the learned, too, in both cases in respect of protection is based on that (limited kind ownership which has been referred to before)."1

Menu in his Institutes, IV, 201, and Apastamba<sup>2</sup> Difference of prohibit a person from bathing in a tank or other reservoir between Menu excavated by another person, and the former in a succeed-valkya regarding sloka (IV, 203) recommends the resort to natural water in streams, reservoirs and springs. There can be no doubt reservoirs that, generally speaking, natural water would be more clean and healthy than water stored in an artificial excavation. The total prohibition of the use of the latter, however, being impracticable we find Yajnavalkya8 directing that one bathing in a reservoir excavated by another should first dig out five balls of earth. This rule, if followed, would provide an automatic machinery for the perpetual preservation of the tank from silting.

and Yajna-

<sup>&</sup>lt;sup>1</sup> See Mandalik's Vyavahara Mayukha and Yainavalkya, Appendix II, p. 337.

Institutes, II, Adhy., sl. 5, Bombay edition.

Quoted by Kulluka in comm. Menu, IV, 201.

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Stigma attached to the use of water from reservoir constructed by low caste men.

38. Notwithstanding the public property in dedicated waters, a stigma attaches to water from reservoirs constructed by men of low caste. The association of ideas with an actual gift of water from the hands of such a person may account for this feeling. Parásara¹ lays down a penance for drinking water from a tank excavated by a chandála.

Value of tanks for irrigation purposes.

39. The value of tanks for irrigation purposes was early recognised by the Hindus, and rules laid down for their preservation. In the Mahábhárata<sup>2</sup> Narada enquires of Yudhishtira, whether in the latter's realms there be tanks large in size, and full of water, placed at proper localities so as to make agriculture independent of rain. Menu<sup>3</sup> prescribes a penance for the complete draining of a well or tank, which might be ascribed to the sin of depriving others of the use of the water, or to that flowing from the loss of aquatic life resulting from such an operation. Severe penalties are provided in other passages of the same sage<sup>4</sup> for those who destroy tanks or obstruct the course of water-streams.

Sale of a tank sinful.

40. The sale of a tank is spoken of by Menu<sup>5</sup> to be equally sinful with the sale of a wife or child.

Jal sasun tenure for excavation of tank on another man's land at a quit rent.

41. It often happens that a man owning a piece of land suitable for the construction of a water-reservoir is unable or unwilling to take upon himself the trouble and expense attending such an operation. In such cases it is very common for him to make over the land to another person who is so willing for a consideration of a quit rent. Such a tenure is called jal sasun and is very common in the western districts of this Province.

<sup>&</sup>lt;sup>3</sup> 10 Institutes, VI, 23.

Institutes, XI, 164, comm., Kulluka.

<sup>&</sup>lt;sup>2</sup> Sabha Parvam, V, 77, Roy's Kulluka. ed., p. 14. <sup>4</sup> Menu, IX, 279, 281.

<sup>&</sup>lt;sup>5</sup> Institutes, XI, 62.

## LEC. X.] FREE GIFT OF LAND FOR TANKS AND WELLS.

The grantee has the right to the tank and such quantity of land around irrigated therefrom, as may be arranged beforehand between the parties. Considering the capital outlay and the fact that for the most part arid and waste soils are selected for the purpose, the tenure is always hereditary and the rent low and permanently fixed. Upon such a tenure the tank is the private property of the grantee. Generally he allows his neighbours to take water from it for bathing and drinking purposes as a license, though, as a matter of law, if he should consecrate the tank by the universal formula, the water would no longer remain his exclusive property, but be open equally to the use of all persons and animals for drinking and bathing.

42. It is not unusual, however, for the superior land-Gift of land for lord to forego his rent, and provide instead for the free a water reserdistribution of the water for his tenants or for the general nunciation of public. In addition to the religious motive there is also in claim for rent are meritorious many such cases the secular incentive of an improvement acts. in the property on account of the convenience to the tenants on neighbouring lands. The gift of land for the construction of a water reservoir is also productive of high religious merit according to the Shastras. Vishnu Dharmottara (quoted in Hemadri Danakhanda: Adhy. 7, Bib. Legal decisions Ind., p. 502):—"He who gives land for the construction ity or otherof a water reservoir attains the abode of Varuna."

In connection with such a condition, the following of water resercases have been decided in the Calcutta High Court :-

(1) Hurunarain Gossain v. Shumbhoo Nath Mundul and Hurunarain others.1—This case was heard by Loch and Seton-Karr, JJ., Shumbhoo who were of opinion that, "under the law as at present and others. understood and acted on," grants for tanks were invalid and resumable by the zemindar. "The jumma to be assessed on

wise of rentfree grants for construction

<sup>1 1</sup> W. R., Civil Rulings, p. 6.

the tanks will naturally be the julkur that appertains to, or is fitting for, property of that nature." It appears, however, that at the time this case was decided a similar point was awaiting decision in a case before the Full Bench, and their Lordships accordingly limited their "present orders to a declaration of the plaintiff's right to assess rent on the three tanks" in dispute, subject to the decision of the Full Bench in the other case.

Peezuruddin v. Mudhosoodun Pal Chowdhury. (2) It seems that this other case was no other than the case of *Peezuruddin* v. *Mudhosoodun Pal Chowdhury*,¹ which was decided in the following year by a Full Bench on a reference by Mr. Justice Looh himself. The facts of the case and the substance of the decision arrived at by the Full Bench will appear clearly from the following head note of the case given in 2 W. R., p. 295:—

"A zemindar, by a sunnud dated in 1830 (after reciting that there was no water in Talook A, and that, the river being at a distance, great inconvenience was felt for want of water, in consequence of which desertions took place in the village) granted to B twenty-two beegahs of land rent-free, stipulating that B should dig a tank on the land and continue to distribute water. The grantee dug the tank and continued to distribute water. In a suit to annul the grant, on the ground that it was void under sec. 10, Regulation XIX of 1793, held by the majority of the Court (dissentient, Levinge, J.), that grants of land made by zemindars free of rent are void under the provisions of that enactment. But further held, by the majority of the Court (dissentientibus, Trevor, J., and Loch, J.), that the grant in question is valid, the reservation of a right to the use of the water by the tenants of the zemindaree being a benefit or service in the nature of rent reserved to the zemindar

<sup>&</sup>lt;sup>1</sup> 2 W. R. F. B., p. 15; B. L. R., Sup. Vol., p. 75.

and that the grant was therefore either not one of those intended to be dealt with by sec. 10, Regulation XIX of 1793,1 or was one which the zemindar was empowered to make by Regulation XLIV of 1793."

In the judgments passed by the learned Judges who composed the Full Bench, a good deal of discussion will be found as to the meaning and intentions of the Government in passing the above Regulations and as to the validity of rent-free grants created by zemindars, and the imports of the terms "rent" and "revenue" used in the Regulations. We need not enter into these details, and for our present purposes, it will be sufficient to note some remarkable comments of some of the learned Judges in this connection.

Mr. Justice Norman, the Officiating Chief Justice, ob- Judgment of served, that "by the acceptance of the grant in question, Norman, Offithe grantee and his heirs are bound to allow the tenants Justice. of the zemindar in the village to take water; and that liability is one which might be enforced by the zemindar or his successors, owners of the zemindary for the time being, if the grantee failed to continue to distribute water, or, in other words, to allow use of the water in the tank to the tenants of the village."

said, was to prevent the interests of Government being prejudiced by reason of the rent or revenue, remaining to the zemindar and accruing from the other portions of the estate, being insufficient to meet the public demand for the whole estate. Government had also intended to protect the rights of the descendants of the zemindar and to prohibit grants, which would be seriously detri mental to these rights."

See Field's Regulations, pp. 234 and 255.

<sup>&</sup>lt;sup>1</sup> Section 10 begins as follows:--

<sup>&</sup>quot;All grants for holding land exempt from the payment of revenue, whether exceeding or under 100 beeghas, that have been made since the 1st December 1790, or that may be hereafter made by any other authority than that of the Governor-General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it."

<sup>&</sup>quot;The object of this law, it was

"It is clear that the revenue or rent reserved to the zemindar need not to be a money rent; it may be a portion of the crops in specie, or apparently anything else having a money value. The word "rent" is large enough for that purpose. In Coke upon Littleton, 142a, of Rent Service, it is said:—"The rent may as well be in delivery of hens, capons, roses, spurs, bows, &c., or any other profit that lies in render, office, attendance, and such like, as in the payment of money."

"So far from prejudicing the interests of the Government, the grant by securing water for the use of the inhabitants of the village appears to have been an essential means of placing the zemindar in a position to realize the Government revenue, and increasing the security of the Government. It was, therefore, clearly not within the mischief intended to be guarded against by the Regulations above referred to, and therefore may be said to be out of the purview of the enactment. (See Lord Coke, 2nd Institute, p. 886; Comyn's Digest Parliament, R. 15, R. 16.)

"Again, water may be treated as the produce of the land, a portion of which the zemindar and those authorized by him are entitled to take. And the right to take it may be considered as of the nature of a reservation of rent in kind."

(We shall subsequently see how this view was held to be erroneous by the learned Sir Barnes Peacock who was of opinion that, even without this consideration of "rent," the grant would be valid all the same.)<sup>1</sup>

Judgment of Mr. Justice Shambhoo Nath Pandit. Mr. Justice Shambhoo Nath Pundit observed :-

"These rent-free grants were very rarely given by the proprietors in consideration of money. These were always pious and religious gifts. It was well-known that Hindoos

<sup>&</sup>lt;sup>1</sup> Mahomed Akil v. Assadunnissa Bibee, 9 W. R., p. 1. See p. 218.

and Mahomedans invariably respect such gifts of their own creation or of their predecessors, and think it a disgrace and sin to take away lands given to Bráhmins, saints and fakeers, as gifts during religious ceremonies for use and cultivation, or for private houses, tanks, orchards, public temples or other religious and charitable purposes. purchasers by private sales or at auction for revenue, Hindoos as well as Mahomedans, generally respected such grants, until about 30 years ago some Bengalees, having become zemindars by private purchase or by public sales, turned a new leaf, and braving the public opinion of their countrymen, began to exercise resumption rights, and so tempted some others to follow their example. With regard to rent-free grants after 1765 up to 1790, out of regard to these time-honoured feelings of the people, the Government, by sec. 3, Regulation XIX of 1793, provided that grants within 10 beeghas given for charitable and religious purposes under certain circumstances and conditions were not to be resumed. Actions for resumption by landlords were very rare before, and even now all zemindars, &c., do not exercise these rights. ..... ·The respect generally shown before, and the disrespect exhibited by some persons since, the new idea has prevailed, relates to, and affects, not only the grants subsequent to 1790, but also invalid grants existing before that year. It was within the powers of the zemindars to give or withhold this authority to resume, when they made settlement of their lands with others on a long lease or in perpetuity, and it has been observed that in former times such a power was often withheld even when putnees were granted for a consideration."

His Lordship was not decided as to the general question of the powers of zemindars to make rent-free grants, but as to the particular case agreed with the Officiating Chief Justice in holding the grant in question to be valid. Loch and Trevor, JJ., held all rent-free grants to be void, and would make no exception of their grant of tank even.

Judgment of Mr. Justice Levinge.

Mr. Justice Levinge quoted a judgment of Mr. Dick in a similar case' before the Sudder Court, in which he had spoken as follows:—

"Grant of the nature in question quod the grantors and their heirs, affect not the public revenue. They affect merely their own rental. The grantor continues himself to pay the revenue, and if he do not, the estate is sold, and then the grant becomes null and void. The law (sec. 10. Regulation XIX of 1793) was enacted to prevent alienation 'prejudicial to the security of the public revenue,' not to enable proprietors and their heirs (whose ancestors' acts are theirs) to profit by their own wrong. The proprietors and their 'successors,' who are authorized to resume at pleasure, are not those who made the grants, or their hereditary ancestors. An auction-purchaser can annul grants and alienations. This the law declares. bonâ-fide alienations are binding on those who made them and on their heirs. This justice requires, and our pre-His Lordship also held the cedents have decided." identical views. He held that the words "exempt from the payment of revenue" in sec. 10, Regulation XIX, 1793, were not synonymous with rent-free. Rent is that which is payable to the zemindar by holders of land under him, and revenue is what is paid to the State. exemption from which would entitle a land to be termed lakhraj, but not rent-free. By Regulation I of 1793, sec. 9, Art. 8, the zemindars were plainly vested with proprietary rights which they could transfer at will, "by

Raja Modhnarain Singh v. Ahmed Ali Khan. Sudder decision 1855, p. 395.

sale, gift or otherwise," and be referred to other portions of the Regulation by which it was plain to him that the right of the zemindar to create a rent (not revenue) free tenure was recognised. If the zemindar cannot make such a disposition, what becomes of his proprietary rights? "They are fritted away and controlled by a shadowy Those who contend that a zemindar cannot distinction. grant a portion of his estate to a member of his family free of rent, payable to him or his heirs, admit he may lease in perpetuity so as to find himself and his heirs a pepper-corn rent—an alienation—just as injurious to the zemindars as a grant of portion of it rent-free." He therefore held that the grant of tank in question was a valid grant, as there was no express law which prohibited the creation of grant of lands, free of rent, payable to the zemindar.

(3) Passing over the Full Bench case of Sonaton Ghose Sonaton Ghose v. Abdul Furrar, in which the general question of resump- Furrar. tion of lakhraj grants subsequent to 1790 was again the subject of a diversity of opinion among the learned Judges, we come to the case of Jadunath Sircar v. Bonomalee Mitter and others.1

In this case it was held that "a tank granted subse-Jadunath quently to 1790 is liable to resumption in the absence of Sircar v. Bonoproof of its having been either the condition of the grant and others. or the intention of the grantor that the tank should be a public benefit. It was also held that such a case does not come within the ruling of the Full Bench of the 9th of January 1865, viz., in the case of Peezuruddin v. Mudhosoodun Pal Chowdhury. The judgment of the Court (Loch and Seton-Karr, JJ.) was as follows:-

"We have compared this case with that decided by the Full Judgment of Bench of 9th January 1865, which had regard to the ques- Seton-Karr,

<sup>&</sup>lt;sup>2</sup> 2 W. R., p. 295,

<sup>&</sup>lt;sup>2</sup> 2 W. R., F. B., p. 15.

tion of the validity of tanks granted rent-free for the benefit of the public. But on examining the sunnud in the case, we do not find it to be on all fours with the sunnud in the case decided by the Full Bench. In that case the grant was made avowedly for the benefit of the public, owing to the scarcity of water and to prevent desertion; and the grant was upheld by the majority of the Court, because the use of water by the tenant of the zemindare was looked on in the nature of rent reserved to the zemindar.

"But, in the present case, the grant says nothing about scarcity of water, depopulation of the village, or any public benefit. No such plea appears to have been advanced by the tenant; and though the Civil Court does find that the tank is a public benefit, there does not seem to be anything to warrant a finding that such was the condition of the grant or the intention of the grantor. The second Court has wholly missed the point at issue, and has misapprehended the case.

"No doubt, when any individual has once excavated the tank, other persons and neighbours besides the excavators may drink of the water. But we think that we ought, in a case like this, to look at the intention of the grantor, and the general benefit to the public at large; and no such benefit appears to have been contemplated in this case.

"Accepting, then, the doctrine laid down by the majority of the Court in the Full Bench decision quoted, we are unable to say that the present suit comes within that ruling, and we think it desirable that the said doctrine should not be strained or carried too far. In this view, holding the case not to be on all fours, and the grant to be admittedly one posterior to 1790, we see nothing to bind the putneedar from enforcing the rights inherent in this tenure, and we reverse the decisions of both Courts and decree this appeal with costs."

The dicta laid down in the above two cases were, however, wholly or partly overruled by the decision in the case of Mahomed Akil v. Assadunnissa Bibee, 1 which we will presently examine, after noticing the case of Chunder Kant Chuckerbutty v. Bunko Behary Chunder and others,2 which precedes that case in chronological order.

In this case it was held that "a zemindar is entitled to resume lands held under an invalid grant or no grant at all, in which a tank was allowed to be excavated by the defendant, not for the public benefit but for a bonus."

The following is the judgment of the High Court in Chunder Kant this case:-

Chuckerbutty v. Bunko Behary Chunder.

"We are unable to understand the legal grounds on which the Principal Sudder Ameen has proceeded in disallowing the plaintiff's rights to resume the tank which the first Court had allowed. The case at first sight might appear to fall under the ruling of the Full Bench of the 9th of January 1885, W. R., Vol. 10, page 15. But in the present case, there is no mention of a sunnud, and nothing in the amuldaree chitta, which is the only document produced, to show that the tank was allowed to be excavated for a public benefit, or that the right to water granted to the tenants was in the nature of rent reserved to the zemindar. The case is simply one where the husband of the plaintiff granted the defendants leave to dig a tank for a bonus; but there is nothing to show that the tank was a public one for the benefit of the whole village, so as to make the case fall within the Full Bench ruling referred to. In this state of things, and on the facts found by the Lower Court, the defendant is not in a legal position to resist the undoubted right of the plaintiff to resume lands held under invalid grants or under no grant There is no necessity for any further enquiry or

<sup>&</sup>lt;sup>1</sup> 9 W. R., p. 1.

<sup>&</sup>lt;sup>2</sup> 3 W. R., p. 177.

finding. This Court is fully in a position to say what the legal rights and position of both parties are; and we accordingly reverse the decision of the Principal Sudder Ameen, and restore that of the first Court with costs."

Mahomed Akil v. Assadunnissa Bibee; Mutty Lal Sen Gywal v. Deshkar Roy.

Then follows the important decision of the Full Bench in the famous case of Mahomed Akil v. Assadunnissa Bibee.1 This and another case, Mutty Lal Sen Gywal v. Deshkar Roy, originally came up before Jackson and Campbell, JJ., for deciding the question "how far the grant for valuable consideration by a zemindar of a specific portion of land to be held without payment of rent is valid as against the heirs of the grantor or purchaser by private sale of the estate. As there had been some conflict of decision upon the point in two very recent cases, their Lordships referred the question to a Full Bench of five Judges including the Chief Justice. A great complication arose out of this reference,—first by the departure of the Chief Justice and Mr. Justice L. Jackson to Europe on account of ill-health, and secondly, when after their return the case was re-argued before a Full Bench of nine Judges, by the death of Justice Shambhoo Nath Pandit and the retirement of Justices Trevor and Campbell before judgment could be pronounced. Judges had sent in written opinions before their death or retirement, but the remaining six Judges sitting on Full Bench of the 14th December 1867, unanimously declared that such minutes could not be treated as judgments. These Judges being equally divided in opinion as to the main point in question, the opinion of the Chief Justice prevailed according to provisions of sec. 36 of the Letters Patent; the Chief Justice and Justices Jackson and Macpherson holding that such grants were "valid as against the heir of the grantor or a purchaser from him by private

<sup>&</sup>lt;sup>1</sup> 9 W. R., F. B., p. 1.

<sup>9</sup> W. R., F. B., p. 1.

sale of the zemindary; and that, under sec. 10, Regulation XIX of 1793, such heir or purchaser is not entitled to resume the land. Justices Bayley, Norman and Seton-Karr, holding a contrary opinion, were thus overruled.

"As at present our attention is confined to the subject of grant of tanks only, it is useless to enter into the lengthy arguments, pro and con, the subject of grants of rentfree lands in general. But bearing in mind the application of the general principle to all grants of land for religious or charitable purposes, which are generally held rent-free, the student will do well to follow these learned arguments both in Peezuruddin v. Mudhosoodun Pal Chowdhury and the present case, in which the question raised in the former case is threshed out exhaustively. This question appears to involve a consideration of the whole policy of the Revenue Laws regarding the burden imposed on land on behalf of the State, and the creation of the rent-free tenures subsequent to the Permanent Settlement, quite as much as it involves any rights or privileges conceded to the zemindars of Bengal by that great measure."

In his judgment in the case of Peezuruddin v. Mudho-Remarks of soodun Pal Chowdhury, Mr. Justice Shambhoo Nath Pan-Shambhoo dit had remarked :-

"If the words of section 10, Regulation XIX of 1793, are strictly construed, rent-free grants subsequent to 1st December 1790 might be considered resumable even by the persons making such grants, and accordingly it might also be thought to be within the power of their heirs and successors and privies to re-attach the lands to the estates from which they were so alienated. appear to be unjust and inequitable that any person should

<sup>2</sup> W. R., Civil Rulings, p. 22.

have right to take advantage of his own wrong, that grants made for consideration should be resumable by the party making the same, and that his heirs should be empowered to question the legality of the act of their predecessors. But perhaps the policy which dictated the laws preferred to protect the rights of the Government without any regard to the hardship or injustice noticed above."

Criticised by Sir Barnes Peacock. Sir Barnes Peacock, in his learned judgment on the present Full Bench case, took exception to these remarks of Justice Pandit and remarked:—

"What man's property will be safe if such rules of construction be adopted?..... For my own part, I hold that it was not against the policy of the Revenue Laws or of the Permanent Settlement to allow a zemindar to avoid his own or his ancestor's rent-free grants. If the Legislature has declared that all rent-free grants are void, we must administer the law as we find it, however much we may reject it, and disapprove of the policy." (But at the time these remarks were made, Justice Pandit was no more in the land of the living, and one may be curious to know what view of the case had been taken by him in the written opinion, which, this Full Bench declared, could not be treated as a judgment, although it might have been intended to be as such.) In conclusion, Sir Barnes Peacock delivered himself in such forcible language as this: "But I am to judge of the intentions of the Legislature from the language which they have used; and without the clearest and most unambiguous expressions I cannot impute to Lord Cornwallis and to the distinguished men who formed his Council, a policy so narrow-minded, so obstructive of progress, so short-sighted, so mean and paltry, so utterly at variance with all the solemn declarations of Government, so fraught with injustice, and so

conducive to fraud, as that which has been contended for on the part of the plaintiff."

Leaving apart the question of the general principle Judgment of Mr. Justice involved in the case, Mr. Justice Seton-Karr observed :- Seton-Karr

"The cases referred to us by the Divisional Bench in this instance comprise several grants. Grant No. 2 is for a tank excavated for the convenience of men and of cattle; and it appears to me, that this grant ought to be governed by the decision of the majority of the Full Bench of the 9th of January 1865 (Peezuruddin v. Mudhosoodun Pal Chowdhury), and that it must hold good against the heirs and successors of the grantor, or against any purchasers, save the purchaser at a sale for arrears of public revenue."

The same learned Judge also remarked that "the decision of our Full Bench of January 9th, 1865, does not finally rule more than that water is in the nature of the rent which the zemindar might receive from a tract otherwise barren and profitless. Water, obviously, is essential to the well-being and even to the very existence of the population, and the tank in that case was, in several ways, a benefit to the land, and a return to the zemindar.

"It may be said, on the other hand, that there is no difference practically, as regards the security of the public revenue, between leases at pepper-corn rent which any zemindar may legally create, and rent-free grants, which, in this view he may not create. But looking to possible and probable results, there is a difference, and a somewhat substantial difference. In the case of land leased at however low a rent, some record of the same must still be kept in the zemindaree papers. The rent, if it were only a rupee for a large village, would still be collected, and traces would be found of the tenant who paid the rent. . . .

"If rent-free alienations at this day are desirable, and are to become general, let the Legislature declare this by a new Act. If grants are required by any liberal and large-minded individuals for a special purpose, such as a people's park, let a private bill be introduced for that purpose in each case."

Judgment of Mr. Justice Norman. Mr. Justice Norman in the course of his judgment said:—

"The suit is one to resume and assess lands within the plaintiff's mouroosee izara.

"As to plots 2 and 3, which were granted for the purpose of making a tank at which the village cattle might drink, I believe we all agree. Indeed, the case is governed by that of *Peezuruddin* v. *Mudhosoodun Pal Chowdhury*, reported in Sutherland's Weekly Reporter, p. 15, by which, I suppose, this Bench is bound."

Judgment of Sir Barnes Peacock. Sir Barnes Peacock's view of the subject was, however, quite contrary, as will appear from the following:—

"The Officiating Chief Justice, Mr. Justice Norman, in the 2nd Full Bench, considered that, as a right was, by the grants then under consideration, reserved to some of the villagers of the estate to take water from the tank, for the construction of which the grant was made, the water might be considered as the produce of the land, and that the right to take it was in the nature of a reservation of rent in kind. But the other Judges did not concur with him in that view; and with all deference, I am of opinion that if it was necessary to reserve rent in order to prevent the grant from being void as a grant for holding land exempt from the payment of revenue, the right reserved to the villagers to take water from the tank was not a reservation of rent, and it was still less a reservation of revenue: it was a kind of revenue which

was wholly useless to Government, and could not assist them in meeting the necessities of the State; and if it was rent, it could not assist the zemindar in providing for the payment of the revenue.

"In the case now under consideration, one of the grants was an absolute grant to the grantee and his heirs for digging a tank; one was an absolute sale of land to the grantee and his heirs for the purpose of building a house; and others were sales of land generally to the grantee and his heirs. It is clear that if a reservation of rent was necessary, the erection of a dwelling-house on the land granted for that purpose could not amount to a payment of rent or revenue whatever opinion may be entertained as to the water of a tank. . . . . . It would be a great anomaly if (under secs. 5 and 8 of Regulation XLIV of 1793 and Act XI of 1859) such a grant (for building a house) were binding upon a purchaser at a sale for arrears of revenue, and not binding upon the grantor himself or his heirs."

The learned Chief Justice based his contentions upon the case of Paramanick v. Odeynarain Mundul.1 "In that Paramanick v. case, the plaintiff purchased the rights and interests of Mundul. one Doorga Dass in a putnee talook, and sued to recover a tank within that talook. The land in which the tank was made was granted in 1217 B. S., before the putnee was created, to the defendant by the zemindar to be held rent-free. The Judge gave a decree for the plaintiff upon the ground that no such grant made after the Decennial Settlement could stand, but upon appeal to the Sudder Court the decree was reversed. It was held by the Sudder Court that the Judge's argument will be applicable should the rights of the zemindar be sold for arrears of revenue,

Peezuruddin v. Mudhosoodun Pal Chowdhury, 2 W. R., p. 27.

Referred to by Levinge, J., in

<sup>&</sup>lt;sup>1</sup> 6 Sudder Dewany Adalut Reports, Select Cases, p. 281.

but can never apply to the case of a purchaser of the mere rights and interests of the putneedar. It was also declared that the tank had been improperly called lakheraj. It was not lakheraj, for it had not been exempted as such from the general state for which the zemindar paid the revenue to Government. (The rule laid down in this case was also followed in Hurree Mohan Dass v. Pran Kishen Rae. 1)

Hurvee Mohan

"Here, then," says Sir Barnes Peacock, "was an express Dass v. Pran decision not based upon the ground that the land granted Kishen Rae. was for a tank, nor upon the ground that water of the tank was rent or revenue. It was decided upon general principles applicable to all rent-free grants made after 1st December 1790, and after a permanent settlement." The learned Chief Justice then cited three other cases,2 in none of which the contended construction was put on sec. 10 of Regulation XIX of 1793. The first of these cases was for the recovery of certain land which had been granted rentfree by the plaintiff's ancestor, and the second was for the resumption and assessment of certain land granted rentfree for the purpose of digging tanks. In both of these cases, it was contended that the grants were void under sec. 10 of Regulation XIX of 1793, but the Sudder Court held, in the first instance, that " the plaintiff could not repudiate his own act and that of his ancestors;" and in the second instance the case was remanded as not coming under the Resumption Laws, but under sec. 8, Regulation XLIV of 1793, as a case between landlord and tenant.

> "The only case," says Sir Barnes Peacock, "in which I find that such a construction was put upon the section, is that

<sup>&</sup>lt;sup>1</sup> Sudder decisions 1847, p. 447.

<sup>(2)</sup> No. 1157 of 1854.

<sup>(3)</sup> No. 336 of 1857, Sudder de-\* (1) Modhu Narain Sing v. Ameeroonnissa Begum, Sudder cisions, 1858, p. 968. decisions, 1852, p. 967.

of Raja Madh Narain Singh v. Ahmed Ali Khan. In Raja Madh that case, Ahmed Ali Khan was plaintiff. He sued to v. Ahmed Ali recover possession of certain lands given to him by Raja Mitterjeet Singh, the defendant's ancestor, in 1211 Hijra, in exchange for a copy of the Koran, and from which the defendant, Raja Madh Narain Singh, the heir of Raja Mitterjeet Singh, had ousted him, claiming a right to do so under the provisions of sec. 10. The Principal Sudder Ameen held that the grant of the defendant's ancestor was valid, and that it could not be ignored under sec. 10, Regulation XIX of 1793, and he gave the plaintiff a decree for possession of the land to be held rent-free. The Additional Judge, on appeal, held that the plaintiff was entitled to possession upon condition of his paying rent for the land, upon the ground that sec. 10, Regulation XIX of 1793, did not sanction the grant of any land made after 1st December 1793 exempt from the payment of On appeal the Sudder Court (Sir Robert revenue." Barlow and Mr. Binny Colvin with Mr. Dick dissenting) held that the grant was void under sec. 10, Regulation XIX of 1793, that the decision of both the lower Courts were wrong, and that defendant was entitled to take possession of the estate.

The case of Paramanick v. Odey Narain Mundel was cited by the plaintiff's pleader in that case, but the learned Judges did not refer to it and relied upon language of the Sudder Court in the case of Shaik Shufaitoollah v. Joy Kishen Mookerjee. Sir Barnes Peacock, however, thought that they must have entirely misunderstood the passage.

<sup>&</sup>lt;sup>2</sup> Sudder decisions. 1855, p. 395. "This case," says the learned Chief Justice, "seems to have been the origin of the impression that grants

not reserving any rent are void, but that grants which reserve a nominal rent are valid and binding." 9 W. R., p. 43.

"The suit in that case was to resume and assess invalid lakheraj lands, not to recover lands which the zemindar or his ancestor had sold.

Further reasons advanced by Sir Barnes Peacock.

"The whole question turns upon the construction of the words in sec. 10, Regulation XIX of 1793, "all grants for holding land exempt from the payment of revenue." Some of the Judges held that these words include grants or leases by a zemindar to hold exempt from the payment of rent. A zemindar may have granted lands rent-free for the life of a particular individual or absolutely, in order to make provision for a wife or daughters, or other dependents, or for the purpose of erecting and maintaining a charitable school, or a scholarship or an hospital, or for some other charitable purposes. "The zemindar himself may," says the learned Chief Justice, "be too honest and too honourable to invalidate his own grant and to resume the lands, but if the construction put upon Regulation XIX of 1793 by some of my honourable colleagues in this case is correct, it will be compulsory upon the manager of his estate, if he should become disqualified by insanity or any other cause, to resume the land, to treat the occupiers as trespassers and turn them out of possession."

In his Lordship's opinion the word "revenue" is used in sec. 10 of the Regulation in its ordinary and proper sense, and refers only to grants for holding free from payments of revenue to Government.

In his able and exhaustive judgment, the learned Chief Justice vindicated the framers of the Regulations for having used the words "revenue and rent" loosely or having confounded the one for the other. He showed how before the settlement, the then "rent" was Government "revenue," and how afterwards "rent" and "revenue" became distinct; and by a careful analysis, he demonstrated the different and precise scopes of the two Regulations XIX and XLIV of 1793

The conclusions which the learned Chief Justice arrived Conclusions at are thus summed up by his Lordship :--

by Sir Barnes Peacock.

"1st.—That, after a permanent settlement, a grant by a zemindar to hold land 'rent-free' is not a grant to hold free from the payment of revenue.

"2nâ.—That such a grant is void as against a purchaser at a sale for arrears of revenue; but that, as long as the revenue is paid, it cannot be treated by Government as a nullity as affecting their interests injuriously.

"3rd.—That a rent-free grant cannot be treated as a nullity by the grantor or his heir, or by any person claiming through him."

The last case that I will read to you is that of the Bengal Bengal Coal Coal Co. v. Hurdyal Marwaree.

The facts were that the Manager of a Coal Company Water drawn had allowed a person to settle on the lands of the Company should be on conditions about which a dispute arose, and the Company consideration sought to assess the land to rent, and the tenants claimed to and as a set-It was held by the High Court that in the case of land where hold it free. of one plot on which a tenant had agreed to dig wells and been dug by a

particular

1 "The Permanent Settlement as compact by which the zemindari engages on his part to pay a fixed amount of revenue to the estate, and the estate, on its part, quarantees to the zemindar, by means of its judicial and fiscal administration, the integrity of the assets from which that revenue is derived, and which, in fact, constitutes the Government's oron security for the realization of its revenue. The declarations to the semindars and other proprietors of land that the jumma assessed upon their lands is fixed for ever (sec. 3, Reg. I, 1793), carries with it, by necessary implication, a rule of the nature laid down in sec. 10, Reg. XIX, 1793."

The learned Chief Justice took this passage to mean "that, even

without any express declaration, such as that contained in sec. 10, grants by unauthorized persons, alienating the revenue of an estate would have been void as against Government and all persons who derived title through Government, and that Government guaranteed to the zemindar the integrity of the assets upon the basis of which the Permanent Settlement of their estate was made, and the zemindars should be entitled to the rents of all lands in respect of which they engaged to pay revenue. It did not mean that the Government guaranteed to the zemindars that they might repudiate their own grants or those of their ancestors." 9 W. R., pp. 43-44.

had done so, the water which the villagers on the Company's estate drew from the said wells, was in the nature of a fair consideration for the land, and that though the land was assessable to rent the Company could not assess it so long as the villagers were supplied with water. In regard to another plot, however, in which some temples had been erected, it was held that the temples did not in any way further the objects of the Company and could not be treated as fair consideration, and that the Company could assess the plot.

The learned Judge by whom the judgment of the Court was delivered observed:

"In the Full Bench case of Peezuruddin v. Mudhoosudun Pal Chowdhury, 2 W. R., 15, it was held that land given for the purpose of digging the tank which was to supply the neighbourhood with water although not charged with rent was not a lakheraj grant, because the water thus given for the general benefit was in the nature of a rent reserved, and that a zemindar had the power to make such a grant.

"I see the little difference between the principle of that case and the present, and that, I am inclined to say that so far as the western plot is concerned, the Company has no right to assess or demand a money-rent so long as the defendants keep up and distribute to all comers the usual supply of water."

It will not be out of place here to draw your attention to the provisions of sec. 37 of Act XI of 1859, which runs as follows:--

"XXXVII. Rights of a purchaser of a permanently settled estate sold for its

The purchaser of an entire estate in the permanently settled districts of Bengal, Behar and Orissa, sold under this Act for the recovery of arrear due on account of the same shall acquire the estate free

from all incumbrances which may have been imposed upon it after the time of settlement and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions:—

- "Fourthly.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.
- "And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.
- "Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot having a right of occupancy at fixed rent, or at a rent assessable according to fixed rules under the law in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do."

## CHAPTER IX.

(Lecture XI.)

## On the Planting of Trees.

Utility of planting groves and trees, 1; Texts laying down the religious merit in planting trees, 2; analogy between sons begotten by a man and trees planted by him and their respective religious efficacies shown from shastric texts, 3; affiliation of trees, 4.—Great religious merit of a gift of land for making a garden, 5.—Shastric and secular punishment for protection of trees, 6.—Filthy uses of gardens interdicted for ensuring their cleanliness, 7.-The above texts applicable to trees in general except vibhitaka, Vakula and tala, 8 .-Great religious merit in the gift of fruit-trees to gods or Brahmins. 9.—Special religious efficacy in certain particular grouping of plants, 10.—Awe inspired by majestic trees in primitive minds, 11.— The specialty of the trees of the fig tribe, 12; the ceremony of Vriksho-pratisttha or consecration of trees, 13.—Expiation for improper attacks on trees in the previous existence, 14.—Sanctity of the aswattha trees, 15.-Sanctity of the vilva trees, 16.-Account of ceremony of affiliation of trees, 17.—Sanctity of the tulsi trees and its marriage with Vishnu, 18.

Planting groves and trees. 1. Having dwelt upon the subject of water-reservoirs, we are introduced by a natural connection to the subject of planting groves and trees. In a tropical climate the relation between the two is obvious. Trees are necessary in order to afford shade and shelter to the traveller who slakes his thirst at the pool of water, and the vicinity of water is necessary to secure proper growth and nourishment to the trees. Even a single tree planted by the side of a well or tank—one of the fig tribe for instance—would afford immense relief to passers-by. From an æsthetic view, also the vicinity of foliage is wanted to complete the beauty of the landscape. This latter view is uppermost in the mind of Varáha Mihira.

<sup>&</sup>lt;sup>1</sup> Brihat Samhitá. Adhy. 55, sl. 1, Bib. Ind., p. 302, J. R. A. S., N. S., Vol. VI, p. 312.

"Considering that water-reservoirs without shade on the margin are not lovely, one ought to have gardens laid out on the banks of the water."

Besides shade, the flowers and fruits of trees are acceptable products to men and welcome additions to domestic economy for use or ornament. The Mahábháratal speaks of the fame acquired in this world by tree-planting.

The secular benefits conferred by trees have also Religious been connected with religious merit by the Hindus ing trees. Certain texts declare generally the virtue of treeplanting.

Mahábhárata.2—" The planting of trees is productive of religious merit in the next world. The planter of trees procures the salvation of his deceased ancestors as well as those of the succeeding future generation, therefore a man should plant trees."

Skanda Purana.8—"He who plants by the roadside a tree producing shade, flowers and fruit releases from sin his ancestors in heaven."

Other texts are more specific in allocating religious merit between the different functions of trees.

Vishnu. For (the benefit of) the giver, the trees gladden the gods by blossoms; guests by fruits; travellers by shade; the manes with the water (trickling down from their leaves) when it rains."

quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1030.

## पथिदिये नरः पापात समारयति वैपिसन् 🛭

Quoted in Hemádri, Adhy. 13, Bib. Ind., p. 1033.

<sup>&</sup>lt;sup>1</sup> कौर्तिय सानुष स्रोके।

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind. p.

<sup>&</sup>lt;sup>3</sup> य**दा** दृष्टं प्रकुरते साथापुष्प-फकोपगम्।

<sup>4</sup> Institutes, XCI, 5-8; also quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1030. Cf. translation in Müller S. B. E., Vol. VII, p. 270.

232 RELIGIOUS EFFICACY OF PLANTING TREES. [CHAP. IX.

Mahábhárata.1—" The trees honor the gods with flowers; the manes with (their) fruit; the guests by shade. The kinnaras, serpents, rákshasas, gods, gandharvas and men, as well as maharshis take shelter of trees."

Bhavishyat Purána.<sup>3</sup>—" Animated beings are satisfied from their branches, bark and sprouts. Trees of beauteous shape, covered with flowers, satisfy the gods by flowers and the manes by fruits. Blessed be the trees for their suppliants never go fruitless."

Salvation in planting fruit and flower trees.

3. The simile which likens the generation of human beings to the sowing of seed in the womb of the earth, is one perfectly familiar to the Hindu sages, and also prevails in the early literature of other nations. The Hindus further considered trees to be conscious and sentient beings. Thus Menu: "These (plants, &c.) encircled with multiform darkness, by reason of past actions, have internal consciousness and are sensible of pleasure and pain."

Putting these two sets of ideas together, it is quite easy to comprehend how a tree should come to be considered

1 पुष्पैः सुरमवान् हचाः फर्केशापि तथा पिटन ।

चायया चातिचीन् तात धूजयित मडीवडाः ।

किन्नरीरगरचांचि देवगश्रद्धे-भाजधाः।

तया सर्वयस्येव संत्रयनित सरी-वराम्॥

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1030.

<sup>2</sup> प्राणिनः प्रीणयनसम्बद्धाः सा-नक्तस्यपद्मतेः।

पुष्पष्टदाः सुतमवः पुष्पैर्देवान् फर्जेः पिळन्॥ पुष्प पन-फल-फ्लायाः सूल-वश्कल-दावभिः।

धन्या मसीवदा येषां विपक्षा यान्ति मार्थिमः॥

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1032.

\* Menu, IX, 32—43.

\* Institutes Adhyaya I, sl. 49—50. In further development of this idea, the Matsya Sukta, 27th patala (pp. 26-27), gives an elaborate list of the respective vegetable growths assumed by transmigrated souls as punishments for particular sins. For our present purposes it will be only sufficient to mention that the abductor of a devadasi is born as a karnikára and the destroyer of temples, tanks, &c., as a dhátakt,

the offspring of the person who planted it; and the religious merit conferred on the planter by the tree, furnished also a parallel to the conception aforesaid.

Mahábhárata.1—"Trees producing flowers and fruits do, like sons, gratify men in this world and conduce like sons to salvation in the next. Therefore, should trees be planted in (the banks of) tanks by men desirous of prosperity."

Padma Purána.2—" Trees discharge in this world the duty of sons for those who are sonless. They bestow on those who have planted them the pleasures derived from tarpana and the rest. With assiduity, O king, plant a pippala tree; that single tree will discharge the duties of a thousand sons."

Bhavishyat Purána.3—"Five born in the ground (trees) are better than ten (sons) born in the house, for (the former) perform the tarpana of their father by leaves, flowers, Verily, a way-side tree (planted) fruits and blossoms. where men take their rest is better (for spiritual welfare) than numerous sons born, without (acquiring) piety or \* \* \* \* \* \* Human sons perform a sráddha at wealth. the end of a year. Trees provide excellent nourishment every day (for the author of their being). That (merit) which is achieved by an umbrageous tree (planted) on the roadside resorted (to by travellers), cannot be achieved by the Agnihotra sacrifice so difficult to be performed by the son that is born of woman. man who has planted a tree, is ever accompanied by a servant and a wife, is the giver of continual gifts and offers a perpetual sacrifice (Yajna)."

<sup>&</sup>lt;sup>1</sup> Quoted in Hamádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1030.

<sup>&</sup>lt;sup>9</sup> Quoted in Hemádri, Dána-

khanda, Adhy. 13, Bib. Ind., p. 1030.

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1032.

Affiliation of trees.

4. A further development of these ideas led to a curious custom of affiliation of trees which will be described later on. (See sec. 17 of this chapter.)

The last stage in the conception would seem to be the allotment of trees planted by one to be his progeny of flesh and blood in subsequent transmigrations.

Vishnu.\(^1\)—"He who plants trees will have those trees for his sons in a future existence."

Gift of land for making garden. 5. The gift of land for the purpose of making a garden procures to the donor, according to the *Vishnu Dharmottara*, bliss in the regions of *Marut* (the Wind-God).

Punishment provided for protection of trees.

In the passages above cited the advantages of treeplanting have been enumerated. Punishments have at the same time been provided for the protection of institutions so eminently beneficial. In harmony with the idea already explained that plants are but transmigrated human beings retaining an inner consciousness and sensibility to pain and pleasure, the cutting of the same is enumerated in the shástras as one of the forms of murder (himsá) and provided for accordingly. A text quoted by Kulluka Bhatta<sup>8</sup> in commenting on a passage in the Menu Samhita, mentions the felling of green wood for fuel as one of the upapátakas or minor sins; thus implying that the proper course is to wait for the tree to die a natural death. The sanctity of vegetable life is further protected by the following texts:-

Vishnu.4—"For cutting (unawares?) trees yielding fruit (such as the bread fruit or mango trees), shrubs, creeping

Quoted in Hemádri, Dánakhanda, Adhy. 7, Bib. Ind., p. 502. Comm. Menu, XI, 143.

<sup>4</sup> Institutes L, 48, Müller's S. B. E., Vol. VII, p. 161.

<sup>&</sup>lt;sup>1</sup> Institutes XCI, 4 Müller's S. B. E., Vol. VII, p. 270; also quoted by Hemádri in Dánakhanda, Adhy. 13, Bib. Ind., p. 1030.

<sup>&</sup>lt;sup>2</sup> चारामधुमिं दला च मादतं स्रोदमाप्रयात्।

<sup>&</sup>lt;sup>8</sup> रूजनार्थमञ्जूष्ट्यानां तुसानासन-पातनसित्यादैवपपातकमध्ये पठितस्य गुवपायसिताभिधानात्

or climbing plants, or plants yielding blossoms (such as the jasmine tree), he must mutter a Vedic text (the Gâyatrî) a hundred times."

Menu.1—"For cutting fruit-trees, shrubs, creepers, lianas or flowering plants, one hundred rikas must be muttered.

"If a man destroys for no good purpose plants produced by cultivation, or such as spontaneously spring up in the forest, he shall attend a cow during one day, subsisting on milk alone."

Secular penalties have also been imposed on those who violated these injunctions, although apparently these are imposed only in case of trespass on another's property. A man committing ravages upon plants of his own would to all appearances be left to the devices of his own conscience.

Vishnu.9-"A feller of trees yielding fruit (shall pay) the highest amercement. A feller of trees yielding blossoms only (shall pay) the second amercement. cuts creepers, shrubs or climbing plants (shall pay) a hundred karshápanas. He who cuts grass (shall pay) And all such offenders (shall make one karshápana. good) to the owners (of the trees or plants cut down by them) the revenue which they yield."

Menu.8—" According to the usefulness of the several (kinds of) trees a fine must be inflicted for injuring them; that is the settled rule."

7. In order to maintain the cleanliness of gardens, the Provisions for Hindu sages interdicted their use for filthy purposes. Thus ance of the Vishnu prohibits the use of such a place or its vicinity gardens. for answering a call of nature; Harita<sup>5</sup> prohibits resort to

Institutes XI, 143, 145.

Institutes V, .55-59; also quoted by Kulluka in Comm. Menu, VIII, 285.

Institutes VIII, 285.

<sup>\*</sup> Institutes LX, 14, S. B. E.,

Vol. VII, p. 195; also quoted in the चाचारादमें, Leaf 2/2, Bomb. Ed. <sup>5</sup> न यज्ञियानां रुचावामधस्रातः। Quoted in जाचाराइम, Leafs 2/2 3/1,

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trees used in sacrifices; Apastamba<sup>1</sup> directs the avoidance of the shade of a tree where travellers rest; and Yama<sup>2</sup> prohibits in the same connection the shade and roots of trees in general.

The secular sanction for the above sanitary prohibitions is contained in the text of Vishnu<sup>8</sup> which imposes on the delinquent a fine of a hundred panas and the duty of removing the filth.

Of trees in general.

8. The texts which we have considered thus far deal for the most part with trees in general, and not with any particular trees. The Padma Purána, however, contains an exhaustive enumeration of the consequences of planting trees of particular descriptions. For the most part the results are promised to be good except in the cases of the Vibhitaka which portends transmigration into a demon, the vakula which creates fear from thieves, and the tála which destroys issue.

Religious merit from gift of fruit trees.

9. The religious merit accruing from the gift of fruit trees to the gods or Brahmins is extolled in the following texts. The texts of the Vishnu Samhita, Mahábhárata and Bhavishyat Purána, already cited mostly dwell on the merits of the physical existence of the tree independently of its ownership. It is possible for the rewards there mentioned to be earned by the planter without parting with his right of property in the tree itself. The texts which I propose now to deal, treat specially of trees as objects of gift either to particular gods or to holy Bráhmins.

ı Institutes I, 11, 30,16, S. B. E., Vol. II, p. 93; also quoted in আয়াবেম, Leaf 3/1.

<sup>•</sup> Quoted in the चाचाराइमें, Leaf 2/2.

Institutes V, 106, 107, S. B.
 E., Vol. VII, p. 34.

<sup>&</sup>lt;sup>4</sup> Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p.

<sup>•</sup> Ante, p. 2.

LEC. XI.] HIGH MERIT OF THE GIFT OF FRUIT TREES.

Nandi Purána.1—" The man who gives a fruit-tree with a view to religion, attains the abode of Varuna, with his soul gratified by the fulfilment of all desires."

Mahábhárata.2—" He who gives a fruit-bearing tree to the gods or to the Bráhmins, sports like a god, for time without end in the mansions of those who drink nectar, served by celestial nymphs and accompanied by his progenitors." This is followed by the separate enumeration of the rewards earned by the gift of particular trees, the list not containing the trees prohibited for planting by the Padma Purána, in the text above cited. The passage concludes with the general declaration that by the gift of other trees producing flowers and fruit, the donor attains supreme power and prosperity.4

According to the Nandi Purána 6 "the man who makes a pleasure-garden (for Shiva) full of flowers, furnished with a reservoir of water, protected (on all sides) and possessed of abundance of fruit, sojourns to the abode of Shiva and dwells there for three Yugas."

Special religious efficacy is ascribed to certain Special religigrouping of plants. One of these is called the panch-the grouping ámra, although curiously enough the ámra mango is not of plants. after all included in the composition. According to the

Quoted in Hemádri, Danakhanda, Adhy. 13, Bib. I nd., p. 1034.

प्रदानती नरी याति परमें सर्थ-सम्पद्म् ॥

Quoted in Hemádri as above.

<sup>&</sup>lt;sup>1</sup> फलप्रचच यो ददावनेयुद्गिय सामवः ।

स सर्भकामहप्राता मन्दिरम ॥ Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1034.

<sup>&</sup>lt;sup>2</sup> देवेभ्योऽच हिजातिभ्यो द्यात् फलदं द्रमम्।

स पीयवसुजां स्रोके सैव्यमानी वयोक्तिः ॥

न्नीस्ते **ट्वतकालमननं** जान्वितः ॥

<sup>•</sup> Ante, p. 8.

<sup>&</sup>lt;sup>4</sup> खन्येषामपि दृष्णाचां फल्ल्या स्निनाम् ।

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1041.

Mahábhárata<sup>1</sup> the panchámra grove consists of specific numbers of the (1) ashwattha, (2) nim, (3) vata, (4) tamarind, (5) kapitha, (6) vilva and (7) ámalaki trees, and the planter of such a grove never sees hell. Another version<sup>1</sup> of the same text makes the grove to consist of specified numbers of the (1) ashwattha, (2) nim, (3) champaca, (4) pesara, (5) palm and (6) cocoanut trees.

The last reading is adopted in the Tithitatva<sup>2</sup> without mentioning the name of the work quoted from, and in the same connection Raghunandana quotes a text of the Varáha Purána<sup>3</sup> which makes the panchámra to consist of (1) ashwattha, (2) nim, (3) vata, (4) Játi, (5) pomegranate and (6) sweetlime. All the readings, however, are open to the remark that they include more than five elements in the composition.

Another sacred group is known by the name of the panch avati. It consists, according to the Skanda Purána, of the (1) aswattha, (2) vilwa, (3) vata, (4) dhátri (ámlaki) and (5) asoka; these are to be planted to the east, north, west, south and south-east respectively of a vedi or raised in the middle, four cubits in size and of beautiful shape; when the trees have grown for five years, the place has to be consecrated and religious austerities practised on such a spot are fruitful of endless rewards.

A bigger type of this sacred grove is described in the same work, under the name of Vrihat-Pancha-vati, as composed of a (1) vilwa tree placed in the centre, single specimens of the (2) vilwa ámalaki and (3) ashwattha in the four cardinal directions, a vata tree at each of the four corners, and a circle of twenty-five asoka trees surrounding the whole; the maker acquires the prowess of Indra;

<sup>&</sup>lt;sup>1</sup> Quoted in Hemádri, Dánakhanda, Adhy. 13, p. 1032, and note.

PQuoted in शब्दकस्पड्डस, See पद्यास, p. 2065.

<sup>\*</sup> Quoted in प्राचतोषिषी, pp. 381-2.

he is master of incantations in this world and obtains salvation in the next.

11. The mind of primitive man was undoubtedly moved Awe inspired with awe at the majestic monarchs of the forest which by majestic towered high their heads over the surrounding vegetation. The Vanaspatis or 'Lords of the Forest,' have been the objects of Hindu homage from the most ancient times.

The Satapatha Bráhmana contains directions as to the Vanaspati homa or oblation to fire in honor of the Lord of the Forest and identifies him with Soma.

The solitude of the forest, personified as the goddess Aranyani, is the subject of the following hymn in the Rig Veda (X, 146):—

[Muir's Sanskrit Texts, Vol. V, p. 423.]

- "1. Thou seemest, goddess, here to stray, Forlorn among these trackless wood, These dark and dreary solitudes. Why dost thou not inquire the way That leads to cheerful human haunts? Is there nought here thy courage daunts?
- "5. Herself this goddess does not slay, Although she nurtures murderous beasts: On luscious fruits the traveller feasts, Supplied by her and goes his way.
- "6. Rich scented, fragrant, full of flowers, Her realm with various food is filled; For though by hinds she is not tilled, She drinks in sap from heavenly showers."
- 12. The trees of the fig tribe by the vigor of their Trees of the growth, their abundance of fruit and thickness of shade, attracted early attention. As early as the Sutra period, the ashwattha had been placed under the special guardianship of Aditya, the plaksha of Yama, the vata of Varuna,

<sup>&</sup>lt;sup>2</sup> III, 8, 3, 33, S. B. E., Vol, XXVI, p. 208; also IV, 5, 2, 11; ditto, p. 395.

and the udumbara of Prajapati.¹ We have observed in connection with the rules of vastu vidyá that these trees are auspicious in certain directions and of evil omen in others. Similarly we find it laid down in the Vishnu Dharmottara² that in a garden, the plaksha is auspicious to the north, the vata to the east, the udumvara to the south, and the ashwattha to the west; they are not desirable if growing in the south, &c., i.e., contrary to those respectively indicated above to be auspicious. The same treatise directs thorny trees to be placed at a distance in gardens, a rule founded on obvious considerations of convenience, and to be compared with the directions in the Grihya Sutras³ for the selection of a building site free from such or their eradication if existing thereupon.

According to the Matsya Purána in a pleasure-garden the fruit-trees should be placed to the east; the milky trees to the west; to the south a water-reservoir graces with the lotus; nalas and tálas to the north.

A garden if attached to a house is to be placed on its left side on the authority of the Vishnu Dharmottara.<sup>5</sup>

The ceremony of pratishttha or consecration.

13. The ceremony of pratishthá or consecration for trees and groves is described in the Matsya Purāna<sup>6</sup> to be in its preliminaries the same as that already described for water-reservoirs. The erection of the mandapa, the appointment of priests and the collection of materials is the same. The trees which are the subject

<sup>&</sup>lt;sup>1</sup> Gobhila Grihya Sutra, IV, 7, 24, Bib. Ind., p. 713.

<sup>&</sup>lt;sup>2</sup> Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1041.

Gobhila, IV, 7, 4, Bib. Ind.,
 p. 707, Ashwalayana II, 7, 5, Bib.
 Ind., p. 143.

<sup>•</sup> Quoted in **एरिअफ्निविसास** p. 714.

Quoted in Hemádri, Dánakhanda 13, Bib. Ind., p. 1041.

e Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1048. The same directions also occur in the Parishishtha of Ashwaláyana Grihya Sutra, " बारामेख्य विशेषम्,' &c. See Bib. Ind., Ashwaláyana Grihya Sutra, p. 344.

of the ceremony are to be irrigated with holy water, beautified with rice-flour and alaktaka, adorned with garlands and covered with cloths. The ear-boring ceremony is then to be performed for each with a golden needle and collyrium applied (as if to their eyes) with a golden pencil; and imitation fruits of silver placed upon the platform at the foot of each tree. A kalasa properly filled is to be installed for each, and homas offered for Indra and the other Lokapálas or guardians of the quarters of the globe and also in honour of 'Lord of the Forest' Vanaspati, of which mention has already been made, and which is specially introduced because of the Then a milch-cow, covered with white cloths, ornamented with gold, specially in her horns, and accompanied by a milking vessel of bell-metal, is to be released in the midst of the trees, with her face to the north, so that naturally she proceeds in that direction. The worshipper then is bathed by the priests from the auspicious waters of the installed water-pots to the accompaniment of music and auspicious songs. Having so bathed and attired himself in white cloths, the worshipper honours the priests with appropriate presents. The ground is sprinkled for four days with milk and a homa performed with ghee, barley and black sesamum. On the fourth day there is held a great festival and presents again offered to the priest. He who performs the vrikshotsava or 'Tree-festival,' according to the above rule, has all his desires gratified and enjoys eternal exaltation. The man who has consecrated even a single tree, dwells in heaven till three ayutas of Indra. He procures the salvation of past and future generations, and obtains final emancipation from which there is no return.

14. In the shástras certain diseases are ascribed to Expiation for improper attacks upon trees committed in a previous attacks on

trees in the previous existence.

existence, and the expiation laid down for such sins consists of making metallic images of particular trees and bestowing them upon Brahmins after proper worship, &c. Gifts of this kind are described in the Dánakhanda¹ of Hemádri for ashwattha, vata and mango trees.

Ashwattha trees. 15. We have already seen that in the Ghobhila Grihya Sutra the ashwattha is described as a tree presided over by Aditya. The latter divinity is identified by Yáska with Vishnu.<sup>2</sup> In later days, therefore, the ashwattha came to be treated as a tree specially sacred to Vishnu, and so Krishna declares himself in the Bhagavat Gita<sup>2</sup> to be the ashwattha amongst all trees. To plant an ashwattha tree is considered an act of piety and to destroy one by cutting a great sin.

Vilva trees,

16. The vilva tree is sacred to Siva, and it is called the Sri-briksha, a name whereby hangs the tale of its origin. The legend is thus given in the Yogini-tantra. Of the two wives of Vishnu, namely, Sri (Lakshmi) and Saraswati, the god was particularly fond of Saraswati and neglected her rival. Weighed with this sorrow the neglected consort went to the temple of Siva in Sri-Saila and practised severe austerities in solitude. When this did not effect the propitiation of Siva, the goddess transformed herself into a tree and continuously worshipped the emblem of Siva with the leaves, flowers, and fruit produced therefrom. Such assiduity for a crore of years procured her the favour

<sup>&</sup>lt;sup>1</sup> Hemádri, Bib. Ind., pp. 1035-1041.

<sup>\*</sup> Muir's Sanskrit Texts, Vol. IV, pp. 64-65.

<sup>8</sup> Adhy X.

चयतः सर्वष्टचायां

<sup>4</sup> Purvakhanda, 5th patala. Quoted in प्राचनीपियी, p. 380.

<sup>&</sup>quot;ये च पापादुराचारा श्रीतदच्छेद-कारियः।

तेऽच पाचादिनरके पर्याके ब्रह्मची-दिनस् ॥

स्तासे जीवमानासु त्रस्यक्षाः कौरितास्वि॥

तिखान् देशे भयं नित्यं राजानी न चिरायुषः।

न च मन्दत्ययं स्रोको यच त्रीष्टचः-च्हेदनम् ॥

of Siva, whereby she became the favourite wife of Vishnu. For this reason the goddess always worships Siva assuming the shape of that tree; and hence the tree is called *Sri-briksha* and it products in every shape highly acceptable to that god.

The *Devi Purana*<sup>1</sup> threatens the direct consequences for those who cut down this sacred tree.

"Those wicked and vicious people who cut down the Sribriksha, are roasted (or afflicted) in the hills named Páchya, &c., for the period of a day of Brahmá=12 millions of divine years, each divine day being equal to one mortal year).

"Such persons, though living, are as good as the dead and are stigmatized in this world as murderers of Bráhmans. The country, where a *Sri-briksha* is cut down, has always cause to fear; its kings do not live long and there is no contentment in this world there."

17. I now pass to the subject of the ancient practice Ancient practice of affiliation of trees. . . . The following account affiliation of this interesting ceremony is to be found in Hemádri.<sup>2</sup>

<sup>1</sup> Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1047.

<sup>2</sup> Chaturvarga Chintamani-Dánakhanda, Ch. 13, Bib. Ind., pp. 1050-5.

ये शासिकः सिसरियां भिरस विभूषा

वे मण्डनादिषु वनेषु छतप्रतिष्ठाः।
वे कामदाः सुरवरोरमिक्कारानां
वेऽनेन तस्य सुरिताणिस्रा भवन्तु॥
स्वे द्विजा विधिवद्यसुता छत।साः
पक्षात्वसायपि सिमदीधितिरमा-

लं ष्टचपुत्र परिकल्पनयाधनोऽधि काष्ठं सदैवभवता सम पुत्रकाष्ट्रस् ॥" त्रच्चवैवर्णपुराषस् । ्षाता वै पुत्रनःसासि सजीव श्रद्ः श्रुतस् ॥ ''

## व्र**स्**वैवर्भपुरासम् ।

'' प्रचेषिमाद्यभफ्कः न भवेद्वरौषां दुष्पुनकैरपि तथोभवकोकनामः । रतद्विचायो त्रुधिया परिपाकाटचान यसेन वेदिविधना परिकल्प-

"चनेन विधिनायस्य रखीता तर्युवकः। पिट्यां निरयस्यानां सधुधार-स वर्षति॥"

स्कन्दपुराष।

<sup>ं</sup> चाताद्यां स्थावित सुद्याद्धि जायसे।

The Matsya Purána has declared: A tank is equal to ten wells, a tree is equal to ten tanks; ten trees are equal to a son, and ten sons are equal to a tree. And the Nandi Purána ordains, that one, who adopts a tree as his son before a fire, according to the rules laid down for the purpose, is absolved from all heinous sins, releases his three generations from the hills, and goes (after death) to the auspicious regions of Brahmá. The preliminaries of the adoption ceremony are narrated at length in the Skanda Purána, the most important point of which is the obtaining of the sanction of holy Bráhmanas versed in the Vedas. The ceremonies for accomplishing the adoption are given at length in the Brahma Vaivarta Purána, the chief features of which are, the investiture of the tree with clothes, jewels and scents, the worship of Indra and other Lokapálas, the sacrifice to the planets, the worship of Mátrikas, the feeding of Bráhmans and making rich gifts to them, and the performance of the Sanskáras usually observed in the case of a male child, viz., the cutting of the navel, the naming, the first feeding of rice the tonsure ceremony, the investiture with the sacred thread and even marriage. The ceremonies are concluded with the following hymn of benediction by the adopter:

"The trees that adorn the mountain tops, those that are planted in the Nandana and other gardens of heavens those that give what is wished by the gods, men, serpent, or kinnaras,—let them by this (incantation) drive away the sin and sorrow of this one.

"These Bráhmanas, who have been offered oblations and have accepted them, and the yonder moon, witness that, O tree! you have been adopted by me as my son. You should ever perform your duties as my son.

"Born of every limb (of mine) and born of my heart, you are my own self, though son in name: may you live for a hundred years."

Then follows more bestowals of gifts to Bráhmanas, presents to the planter of the tree, feasts to the poor and orphans, and general merry-making.

The policy of adopting a tree as son is thus approved: "No good can result to men without sons, but present and after-life are both destroyed by evil sons. Therefore, wise men, considering this, should carefully nourish plants and adopt them by the rules laid down in the Vedas." 1

The tree-son adopted under such rules is said to shed a stream of honey on the adoptive ancestors in hell.<sup>2</sup>

As to the selection of a plant, it is directed that one with thick foliage but soft leaves, capable of bearing cold, wind, and the sun, and of tender age should be selected. One with a feminine name, thorny, crooked, eaten by worms, cr having hollows, is to be avoided.

18. The great sanctity attached to the planting and Tulasi trees. worship of Tulasi trees by Vaishnavas is well-known to require special comments thereon. Under this head, Gopal-bhatta<sup>3</sup> quotes many slokas from the Skanda Purána, Nasâda and Agastya Samhitas. It will be sufficient for our purposes here to note, that the plucking of the Tulasi leaves is prohibited on the 12th days of the moon, and a text from Karttika Mahatmya is quoted to authorise the plucking of its leaves for the purposes of the worship of gods.<sup>4</sup> Gopálbhatta also alludes to a ceremony known

<sup>ं</sup> त्रस्तिवर्तपुराणं। इन्द्रस्ययेन दुर्धत मवार्थेनृतुष्स त्र त्रस्तिवर्त्तपुराणं। च ॥ "

श्र See श्रीदरिभित्तिविसास, pp.188-93. १ See श्रीदरिभित्तिविसास, pp.116. देवार्थे तुस्सिवेदो दोमार्थ साम-

as the marriage of Tulasi with Vishnu, an act of great religious merit to the Vaishnavas. The details of the ceremony are to be found in Vasishthás, texts quoted by Gopalbhatta. The pratishthá or instituting ceremony of a Tulasi plant is described in the Vishnu Yámala Tantra.<sup>1</sup>

<sup>&</sup>lt;sup>4</sup> श्रीदरिशक्तिविद्यास।

#### CHAPTER X.

### (Lectures XII and XIII.)

On the Gift and Dismissal of Sacred Bulls.

Domestication of animals—horse, bull and cow—by the Aryan people, 1.—Wealth consisted of herds of cattle as shown by passages from the Rig-Veda, 2.—Passages showing beef to be a common article of food, 3; feeling prevalent against beef-eating even in those days, 4; difference of opinion regarding beef-eating, 5; sacred nature of cow's life, 6; importance of bulls, 7; no wrong in trespass by a seed-bull or a consecrated cow, 8; special efficacy of gifts of cows, 9; gifts of imitation cows, 10; ceremony of gift of cows, 11; authorities regarding gift of cows, 12; the Vrishotsarga ceremony or the ceremony of consecrating a bull, 13; practice of marking the consecrated bull, 14; no punishment for trespass by a consecrated bull, 15.—Decisions by the different High Courts of the Question whether a consecrated bull is a "property," or an "object" within the meaning of sec. 295, I. P. C.-Queen-Empress v. Jameera-Queen-Empress v. Bandhu-Queen-Empress v. Nihal-Queen-Empress v. Nulla-Queen-Empress v. Imam Ali-Hakim v. Empress-Romesh Chunder Sanyal v. Hiru Mondul.

1. Dr. Schruder in his Prehistoric Antiquities of the Domestication Aryan people, writing on the subject of cattle, remarks: specially horse, "When we visit a farm at the present day and observe the friendly nature of the life which goes on there—the horse proudly and obediently bending his neck to the yoke; the cow offering her streaming udder to the milkmaid; the woolly flock going forth to the field, accompanied by their trusty protector, the dog, who comes fawning to his master—the familiar intercourse between man and beast seems so natural that it is scarcely conceivable that things may once have been different.

of animals,

<sup>&</sup>lt;sup>1</sup> See pp. 259-260.

"And yet in this picture we only see the final result of thousands and thousands of years of work of civili-In the civilised states of the old world, indeed, the domestication of animals is lost in the mists of antiquity. Nay, if we go beyond the limits of history and travel back to the time when Semitic tongues and nations were not yet differentiated, we find that the domestication of animals was far advanced \* \* \* Even the Indo-European was a cattle breeder. His herds (Goth. hairda, Sans. Cárdha) were his wealth (Tae., Germ., c.5), the object for which he fought (Sans. gávisthi, "struggle for cows"-"fight"), and the source of his food and clothing. Yet he too must have passed through a lower stage of development. The importance of cattle in the primitive age is shown by the existence of a common collective name for it. The Germ. vich, O.H. G. fihu, Goth. faihu, O. P. peku (?), are etymologically identical with Lat. pecus, Sans. patu, Zend. pasu ("small cattle" particularly), and go back to a root paç (Sans. pâcáyâmi), which meant "fasten," "capture." \* \* By far the most important position was occupied by the horned cattle as is shown by the primitive names for the special ages and sexes. (Sans. Ukshán, gô, vaçá, pṛshati "spotted cow," rshabhâ, vṛsha, dhenu, and so on.)

"The cow, which like the bull, is intimately connected with Indo-European mythology, has during her lifetime a double significance. On the one hand, she is the milk giving creature (Sans. dhênú, Zend. gáo daénu), on the other, she is specially the beast of burden and draught of the primitive age (Sans. anadváh). When killed, her flesh supplies food, while the hide is converted into shield, bow-strings, bags, straps, caps, &c."

Wealth consisting of herds of cattle.

2. The Rig-Veda abounds with passages indicating the idea of wealth consisting of herds of cattle, an idea

natural to a pastoral people the most valuable product being the milk. For example, I quote the following:—

- "Day by day we invoke the doer of good works for our protection as a good milch-cow for the milking (is called by the milker).
- "Drinker of the soma juice, come to our (daily) rites, and drink of the libation; the satisfaction of (thee who art) the bestower of riches, is verily (the cause of) the gift of cattle. That is, if Indra be satisfied, he will augment the worshipper's herds)."
- "Verily the words of Indra to his worshippers are true, manifold, cow-conferring, and to be held in honour; (they are) like a branch (loaded with) ripe (fruit).<sup>2</sup>
- "I invoke the milch-cow that is easily milked, that the hardy milker may milk her: may Savitri accept this our excellent libation, that his heat may thereby increase: it is for this, verily, that I earnestly invoke him.
- "She comes lowing, abounding in rich (products), desiring her calf in her mind: may this cow grant her milk to the Aswins: may she thrive for our great advantage."
- 3. Numerous passages also exist in the Veda pointing Beef,acommon to the fact that beef was a common article of food with food.

  men, and as such a favourite offering for the gods. Thus Muir speaking of Indra in the Rig-Veda, says: "He is also spoken of as eating the flesh of bulls, or buffalces, at the same time that he drinks the draughts of Soma (X. 28, 3, adrinā te mandinah Indra tūyān sunvanti somān pibasi tvameshām pachanti te vrishabhān atsi teshām). Three hundred are mentioned in v. 29, 7f., one hundred in viii 66, 10, and one in (x)C 27, 2." The following extract from the same author is also to the point: "The

<sup>&</sup>lt;sup>2</sup> Wilson's Rig-Veda, Vol. I, p. 11.

Ditto ditto, ditto, p. 21.

Ditto ditto, Vol. II, p. 136. Also see p. 140.

Muir's Sanskrit Texts, Vol. V,

Ditto ditto, ditto,

cutting up of flesh, apparently for sacrificial purposes, is mentioned in one place, I, 161, 10 (Māmsam ekah pimsáti sūnayā bhritan.) In I, 164, 43, reference is made to the cooking of a bull as being a primeval institution (Ukhánam prisnim apachanta vírús táni dhurmàni prathamani ásan; comp. X, 27, 2; X, 28, 3. In V, 29, 7; VIII, 12, 8; VIII, 66, 10, mention is made of the gods cooking or eating large numbers of buffaloes. From the fact of these animals being offered in sacrifice, it may perhaps be inferred that they also formed a portion of human food." Muir here refers his readers to the "general note" appended to Sir William Jones' translation; and Menu XI, 60, where killing of a cow is mentioned as a minor sin (upupátaka) and also to verses 109, &c., which lay down rules for expiating the sin of slaying a cow. The passage referred to in Sir William Jones' "general note" is an extract from Mandana ratna Pradipal which quotes a text of Smriti declaring the slaughter of a bull at a sacrifice to be not permissible in the present or Kali age.

Under current of feeling prebeef-eating.

From very ancient time, however, an under-current vailing against of feeling seems to have set in against beef-eating, based perhaps on utilitarian or æsthetic grounds, regard being had to the utility of the animal to man and the claim to motherhood from the milk which sustained the breeder. Thus, we read in the Satapatha Bráhmana:2—

> "Let him not eat (the flesh) of either the cow or the ox; for the cow and the ox doubtless support everything here The gods spoke: 'Verily, the cow and the ox support everything here: Come let us bestow on the cow and the ox whatever vigour belongs to other species (of animals).' Accordingly they bestowed on the cow and the

Work of Sir Willam Jones, Vol. I, Calcutta Ed., 1874, pp. 353

<sup>&</sup>lt;sup>9</sup> S. B. E., Vol. XXVI, p. 11.

ox whatever vigour belonged to other species (of animals); and therefore the cow and the ox eat most. Hence were one to eat (the flesh) of an ox or a cow, there would be, as it were, an eating of everything, or, as it were, a going on to the end (or to destruction). Such a one indeed would be likely to be born (again) as a strange being (as one of whom there is) evil report, such as 'he has expelled an embryo from a woman,' 'he has committed a sin,' let him therefore not eat (the flesh) of the cow and the ox. Nevertheless Yagnavalkya said, 'I, for one, eat it, provided that it is tender."

5. It is true that a text of Apastambal ordains that Difference of "the meat of milch-cows and oxen may be eaten," but garding the Gautama,2 on the other hand, expressly prohibits the eating of the flesh of milch-cows and draught oxen," and later on, Chapter XXII, 18, he says "(the penance for killing) a cow is the same as for (the murder of) a Vaisya."

And notwithstanding the insinuation of Satapatha Bráhmana, Yâgñavalkya<sup>8</sup> in his chapter in expiation of minor sins lays down similar directions for expiating the slaughter of a cow as is to be found in the verses of Menu referred to above.

The cow's life was considered so sacred in Gauta-Cow's life ma's time that in battles men cried quarter by calling them-sacred. selves cows and the cry was respected. committed) by injuring or slaying (foes) in battle, excepting those who have lost their horses, &c., and those who declare themselves to be cows or Bráhmanas." 4

It is rather noteworthy that in the institutes of Apastamba, who did not recognise the sanctity of bovine life,

<sup>&</sup>lt;sup>2</sup> S. B. E., Vol. II, p. 64. Apastamba, I, 5, 17, 30.

<sup>&</sup>lt;sup>2</sup> Ditto, p. 266, Gautama, Ch. XVII, 30.

<sup>\*</sup> Yâjñavalkya III, 263, 264. Mandalik's Ed., p. 171.

<sup>4</sup> Gautama, see S. B. E., Vol. II, p. 226 and note.

no trace is to be found of such a custom. He simply says that "the Aryas forbid the slaughter of those who have laid down their arms, of those who (beg for mercy) with flying hair or joined hands, and of fugitives." But even Apastamba has declared that the same penance as for a Sudra must be performed "if a milch-cow or a full grown ox (has been slain), without a reason. ('A reason' for hurting a cow is, according to Hara Dutta, anger, or the desire to obtain meat.)

Importance attached to bulls.

Bulls for impregnation would be required for preventing the deterioration of the breed in a later period of human progress when the state of society had completely changed from the pastoral to the agricultural. The importance attached to these bulls is exemplified by the rule laid down in the shastras that the bull kept for impregnation should be allotted to the share of the eldest son on partition. This rule is to be found in Gautama, Chapter XXVIII, verse 5, and is quoted by Colebrooke in his Digest. The text is referred to in Dáyabhaga, Chapter II, 37. Colebrooke also quotes a text of Menu,4 which declares that, "if there be four wives of a Bráhmana, in the direct order of the classes, and sons be produced by them all," then in a partition among such sons, the bull kept for impregnating cows goes with other things to the Bráhmana son.

Grass for seedbulls and cows.

8. Yâgñavalkya<sup>5</sup> absolves the seed-bull (and the consecrated cattle of which I will speak presently) from the consequences of a trespass in green fields. A similar liberty is accorded the owners of bulls and cows for procuring their food. Thus Menu has declared that taking of grass

<sup>&</sup>lt;sup>1</sup> Apastamba I, 9, 26, 1 S. B. E., Vol. II, p. 83.

<sup>&</sup>lt;sup>9</sup> S. B. E., Vol. II, p. 300.

Colebrooke's Digest, Vol. II, p. 219, v. 47.

<sup>&</sup>lt;sup>4</sup> Colebrooke's Digest, Vol. II, p. 227, v. 60. Menu IX, 150.

See Mandalik's Yâgñavalkya, p. 227; also Colebrooke's Digest, Vol. II, p. 103.

for feeding cows is no theft.1 According to several commentators the condition is that the things taken were unen-Apastamba lays down the rule that "if seeds ripening in the pod, food for a draught ox (are taken), the owners ought not to forbid it; but adds that "to take even these things in too great a quantity is sinful." So also Gautama, while he throws the responsibility of damage done by cattle on the owner or on the herdsman if it be so attended, makes an exception of the rule in the case of a man's taking grass for a cow.8

- The gift of cows is one of the approved forms of Gifts of cows. gift according to the shastras for the acquisition of religious merits.8 Numerous texts declare the efficacy of a gift of cows according to their respective colours and to the accompaniment of calves of the same colours, or in a pregnant state or at the moment of delivery.4
- 10. As in the case of trees, there are directions for the Gifts of imitagift of imitation cows of various substances as a means various subfor securing absolution from particular sins or for acquir-stances. ing particular rewards. Nine forms of such gifts are mentioned in the Matsya Purána quoted in Hemádri, Dánakhanda, p. 398. The Varáha Purána speaks of the gift of Kárpasa-dhenu, the Bhavishyat Purána of a Lavana-dhenu, and the Vishnudharma of a Karpurádidhenu.7 The gift of a golden cow is described in numerous works. Vishnu-dharma, Agni Purána, Vishwamitra, Vriddha Gautama, Banddhayana, and the Vayu Purána quoted in Hemádri (pp. 436-443).

Menu VIII, 339, Bühler, p. 313. <sup>2</sup> Gautama XII, 19, 20 and 28,

S. B. E., Vol. II, p. 238.

Bhavishyat Purána, quoted in Hemádri, Dánakhanda, p. 397.

<sup>4</sup> See Vaitarani-go-dana and Ubhayatomukhi-go dana in Hemádri, Dánakhanda, pp. 473-476.

<sup>&</sup>quot;बारज्ञसत्यना देवा जीः सवा-साञ्जूपर्म्बन् । प्रस्त्यमानां योगं च दखातः भय-

तीमुची ।" &c.

Hemádri, Dánakhanda, p. 431. Ditto ditto, p. 432.

<sup>&</sup>lt;sup>7</sup> Ditto dilto. p. 434.

Ceremony of gift of cows.

11. A ceremony is described in the Puránas called devatoddeshena godánum (१४३०६) which might at first sight imply a gift of cows for the gods. The texts of the Linga Purána and the Vishnu-dharma, quoted in Hemádri (pp. 463-464) would seem to shew that the gift has to be made to a proper Bráhman in the presence of the particular god intended to be propitiated. The gift in that way is made to a Bráhman devoted to the worship of that particular divinity and the propitiation of the god is not by a direct gift made to him, but through the medium of a gift bestowed upon his follower. A text of the Vahni Purána quoted in Hemádri (p. 465) directs the donor to conceive his favourite god in the Bráhman upon whom the cow is intended to be bestowed.

Various authorities regarding gifts of cows. 12. Gifts of cows directly intended for the service of the gods are separately mentioned in the shástras:—

Skanda Purána!:—"He who bestows a milch-cow to (in the name of) Siva or Vishnu, for ablution or as present attains the Supreme Brahma."

Bhabishyat Purána:—"He who bestows a young milch-cow to sun, gives [as it were] the whole world with all the animate and inanimate objects on it.

"The gift for the purpose of ablution or of homa of a fine Kapila cow of good breed and giving good milk becomes [in merit equal to] the gift of a hundred cows.

"The man who makes a gift of a cow with proper ornaments, to the Sun-god gets eight times the spiritual benefit of performing an Aswamedha sacrifice.

"He who bestows to Sun-god a cow about to calf attains the merit of making a gift of the whole world comprising the seven islands.

<sup>&</sup>lt;sup>1</sup> Quoted in Hemádri, Dánakhanda, p. 466.

"When the two front legs and the forehead [of the calf] are out, the gift becomes tantamount to the gift of the whole earth with all the mountains and woods and forests on it."

The Siva Dharma 1:—" [The gift of] ten cows with a bull is called Brishabhaikadasi. He who with a pure heart makes such a gift to Siva becomes in strength, enjoyment and other attributes equal to eleven Rudras, and that man of subdued passions enjoys pleasure to his heart's contents in Siva and other lokas (worlds)."

Bhabishyat Purána<sup>2</sup>:—"Ten cows with a bull is called Brishabhaikadashi. Hear what result obtains the man who makes such a gift to the Sun. He becomes equal to twelve Suns in prowess, is endowed with the attributes of anima (subtilty) and enjoys pleasure to his heart's contents in the Solar and other in lokas Heaven."

Siva Dharmottara \*:—"Hear what good derives the man, who makes the beautiful gift of one hundred cows with a bull and his twenty-one generations. Mounted on vimanas (celestial chariots), resplendent like one crore Suns, and capable of going anywhere and everywhere, attended by numerous vehicles and worshipped by the gods and demons, endowed with the strength of 100 Rudras, like a second Birabhadra, he goes to the beautiful region of Siva and becomes the lord of multitude."

Bhabishyat Purána : — "Hear O king what good derives the man with his twenty-one generations, who makes a gift of a hundred cows with a bull to the Sun. That king resplendent like ten million Suns and as another Sol goes to the beautiful region of the sun and there enjoys pleasure like the Sun.

Quoted in Hemadri Danakhanda, p. 466.

<sup>&</sup>lt;sup>2</sup> Ditto ditto, p. 467.

<sup>Quoted in Hemádri, Dána-khanda, p. 467.
Ditto ditto, pp. 467-468.</sup> 

"Having had all sorts of enjoyments, he at the time of the destruction of the whole creation casts off his shroud of illusion (body) and enters the orb of the Sun. becomes omniscient, all Sunlike, he is at rest in himself capable of going everywhere on account of being perfect and shines like the Sun."

Vishnu Dharmottara: -- "He who after passing three nights on the altar, and living three nights on cow's milk makes a gift of a well-fed cow adorned with gold horns, silver hoofs, and tail of pearls, and covered with a piece of new cloth together with a milk-pallet made of bellmetal and with dakshina to a Brahman properly robed, and satisfied, and who thereafter lives three nights on cow's milk, goes to Sivaloka.

"The man, O Brahmans, who makes gift of a cow in this manner enjoys these best fruits for as many years as the cow has got hairs on her body."

Vrishotsarga i.e., ceremony a bull.

The ceremony of consecrating a bull (vrishotsarga) of consecrating forms a part of the sráddha ceremony of the Hindus. Colebrooke has omitted to give a description of this ceremony in his otherwise very fair account of the sraddhas in his essay on the religious ceremonies of the Hindus. This ceremony forms the subject of separate treatises which give the fullest information upon all points. will be sufficient for our present purposes to state that the ceremony seems to be a survival of the Vedic rite of gomedha where the bull is set free instead of being slaughtered. The rationale of this consecration is to be

सभ्पर्भ Ashwalayana Grihya Sutra, pp. 103, 108 and 109; also Colebrooke's Essays, Vol. I, pp. 206-207. Also see ▼▼ **चर्दी** Ashwalayana Grihya Sutra,

pp. 200, 201 and 209. ग्रास्त्रों। Ashwalayana Grihya Suira, p. 251, &c., and Vali in p. 260. See द्वीत्सर्गः Ashwalayana Grihya Porisishta, pp. 331 to 333.

found in the animal's use as a propagator of the breed and that explains the license given to its movements. Thus Menu has declared "that no fine shall be paid for (damage done by) a cow within ten days after her calving by bulls (kept for impregnation) and by cattle sacred to the gods, whether they are attended by a herdsman or not."1 The following explanation occurs in Bühler's Notes. "Bulls," i.e., 'those set at liberty (see VI. LXXXVI) are meant' (Nâr., Kull.), which may be met with near many Indian villages and in many towns. Cattle sacred to the gods, i.e., either such are set apart for sacrifices, or 'such as are dedicated to temples' (Medh.). The other commentators prefer the second application." The same text is quoted by Colebrooke, but he gives the further explanation by Kullukabhatta on the words "attended or unattended" of the text:-"Since even consecrated bulls are kept by herdsman among cows for the sake of impregnating them, it is possible they may be attended by a keeper."

14. The marking of the consecrated bulls is an ancient The marking practice, as will be seen from a text of Usánas, quoted by of consecrated bulls. Colebrooke in the above connection "usanar": "For elephants and horse, no fine is allowed " \* \* \* or . . . nor for bulls marked with the token of consecration." "Bulls marked" is explained by Ratnákara as "distinguished by the mark of a trident and the like." "The figure of a trident," says Colebrooke, "is stamped with a hot iron on the right shoulder, and a circle or discus on the left horn of the steer which is dismissed with four heifers at obsequies, and other occasions of mourning; the same marks are made with sanders wood, instead of being stamped with a hot-iron, on a steer dismissed at a marriage or other

Menu VIII, 243. See Bühler,
 p. 297 and note.
 Colebrooke's Digest, Vol. II,
 p. 104.

<sup>&</sup>lt;sup>8</sup> Colebrooke's Digest, Vol. II, p. 104.

The trident betokens the consecraoccasion of rejoicing. tion of the bull to RUDRA; it is not so obvious what is intended by the discus, which is the weapon of Vishnu; for it does not appear that the bull is consecrated to this deity."

Person who is liable for tres-

15. But with reference to the texts quoted in para. 12 pass commit a question arises, that supposing a fine could be imposed, ted by a con- if a tresspass by a consecrated bull occurred, who would secrated bull. be the person liable to pay the fine. Such a bull has no human owner, and the liability may be shifted to the original dismisser or a chance keeper or attendant. following text of Yâgnavalkya, quoted by Colebrooke in his Digest, Vol. II, p. 103, and the commentary thereon have an important bearing on the question :-

> "YAGNAVALKYA.—A bull, consecrated cattle, a cow which has lately calved, a stray, and other beasts which are not attended by a keeper, should be set free, for they are impelled by God and the king."

> The Mitácshara explains: "Consecrated cattle" to be such as are dismissed in honour of the deity, according to the form for consecrating bulls. These and the others indicated 'should be set free,' i.e., even though they consume a stranger's grain, no fine shall be levied.

> "In the Ratnácara also, the same exposition is given. Since a fine cannot be imposed for consecrated cattle which have no human owner, the mention of them must be intended for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest occasion none. This also is noticed in the Mitáeshara.

"A bull cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the instituted worshipper of the deity; so, if some person feed with grass or the like, • cattle consecrated by any man, it might be questioned whether he should be liable to a fine, and since it might be questioned, in the case of a bull dismissed, whether the dismisser be liable to a fine, because he is the remote cause of the trespass, therefore it is declared that no fine shall be imposed; or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper."

The question whether consecrated bull or bulls Consecrated devoted to the gods are 'property,' and whether they perty, and an object under can be considered as 'objects' within the meaning of sec. 295, I. P. sec. 295 of the Indian Penal Code, has been the subject of Authorities several decisions discussed below:-

regarding the

(1) The earliest decision on this point is to be found in Queen-Empress Queen-Empress v. Jameera, which is referred to in the Queen-Empress case of Queen-Empress v. Nihal in I. L. R., 9 All., p.348. It was held in this case by Mr. Justice Brodhurst that the bull was not property, for the reason, that a person letting loose the animal, surrendered all rights of property therein.

v. Nihal.

(2) The next decision is that of Queen-Empress v. Queen-Empress Bandhu.<sup>2</sup> "A person was convicted and sentenced under sec. 411 of the Indian Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage. at the time of performing funeral ceremonies."

The Sessions Judge in affirming the sentence of conviction made the following observation: "It was certainly not the intention of the persons who set the bull at large that any human right of property should be attached to

<sup>&</sup>lt;sup>1</sup> Weekly Notes, 1884, p. 87.

<sup>&</sup>lt;sup>2</sup> I. L. R., 8 All., 51.

it by any one, and the intentions of such persons are respected by general public feeling; and the bulls so let loose are looked upon as not liable to be converted to use in any way that would interfere with their liberty. I may be straining a point, but I think it may be held that the Hindu public have such an interest in these 'sánds' remaining unmolested and at liberty, as to make them the subjects of a sort of public rights, and so bring them within the meaning of 'property."

Mr. Justice Straight, before whom the case came up for revision, "held that the bull was not, at the time of the alleged misappropriation, 'property' within the meaning of the Indian Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore nullius proprietus and incapable of larceny being committed in respect of it; and that the conviction must be set aside."

Queen-Empress v. Nihal.

(3) The same view was again expressed by Mr. Justice Straight in another case, Queen-Empress v. Nihal.¹ This also was a case of conviction under s. 411 of the Indian Penal Code, the subject-matter of the charge being a branded bull set at large, as a pious act, for the benefit of a deceased person. The Magistrate, in convicting the prisoner, observed: "The definition given by Sheo Dial, one of the witnesses for the prosecution, of the rights and interests inherent in the person thus setting at liberty a bull sacred to the memory of a deceased, clearly shows that the act does not of itself involve a renunciation of ownership. The only modification that takes place is that he cannot dispose of it to his own advantage and appropriate it to his own use. From this it is obvious that the original

<sup>&</sup>lt;sup>1</sup> I. L. R., 9 All., 348.

owner's title is not completely annihilated. He is restricted to the exercise of such rights of ownership only, as would not militate against the special purpose for which the animal was set apart. This being so, the bull, in this case, must be held to have belonged to, and to have been stolen from the possession of, the complainant."

The Sessions Judge affirmed the conviction on the evidence, but Mr. Justice Straight set aside the conviction and referred to Mr. Justice Brodhurst's decision in Queen-Queen-Empress Empress v. Jameera and his own decision to the same effect in Queen-Empress v. Bandhu. This last case, his Queen-Empress Lordship observed, had been determined after very full and careful observation. The vakeel for the accused in that case "was good enough to lay before me all the information that was obtainable in reference to the practice and procedure among the Hindus in the matter of dedication or setting loose these bulls upon the death of a relative, and from that information it was beyond doubt that, as understood among men of that religion, the person letting loose the animal, by the act of so doing, surrendered and abandoned all proprietary rights therein. My brother Brodhurst in the case of Queen-Empress v. Jameeral obviously adopted this view, which I hold to correctly represent the real condition of things." Such a bull was accordingly held not to be "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of secs. 140 and 141 of the Indian Penal Code.

(4) Against the current of the above three Allahabad Empress v. decisions, is the Madras decision of Empress v. Nulla,2 which seeks to make a slight difference in the case of bulls

<sup>&</sup>lt;sup>1</sup> Weekly Notes, 1884, p. 87.

<sup>&</sup>lt;sup>3</sup> I. L. R., 11 Mad., 145.

dedicated to temples. According to Mr. Justice Muttusami Ayyar and Mr. Justice Brandt, a bull dedicated to an idol is not fera bestia and therefore res nullius simply because it is ordinarily a wandering beast and roams at large free from all control. Their Lordships held that, prima facie, the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership. In commenting upon this decision, Mr. Justice Norris, in his judgment in Romesh Chunder Sanyal v. Hiru Mondul, tobserved that he failed to see anything in this judgment in the least degree impeaching or questioning the correctness of the law laid down by Mr. Justice Straight in Queen-Empress v. Bandhu. Mr. Justice Norris' summary of this Madras case was as follows :—

"In that case two persons had been convicted of mischief and criminal misappropriation in respect of a bull described as 'the Kamatchi Amman temple bull.' On appeal the Sessions Judge, 'having regard to the principle. on which the case of Queen-Empress v. Bandhu<sup>4</sup> was decided, namely, that a bull set at large in accordance with Hindu religious usage, when the original owner abandons all proprietary right in such animal, cannot be the object of larceny, and being of opinion that no material distinction in principle could be drawn between the case of a beast so abandoned and the case of a beast abandoned by its former owner and dedicated or attached to a temple, not, however, without considerable hesitation, held the bull in the latter case to be a fera bestia, and as res nullius to be incapable of being the object of the offences in respect of which the accused were convicted," and quashed the conviction. the case coming before the Court in the exercise of its

<sup>&</sup>lt;sup>1</sup> I. L. R., 17 Cal., 861.

<sup>\*</sup>See I. L. R., 17 Cal., pp.

<sup>&</sup>lt;sup>2</sup> I. L. R., 8 All., 51.

<sup>860-861.</sup> 4 I. L. R., 8 All., 51.

revisional jurisdiction, the learned Judges, Muttusami Ayyar and Brandt, JJ., said:—

"We do not think it necessary to interfere in revision, not because we agree with the Sessions Judge that there is no material distinction between the case of an animal, property in which is wholly renounced or abandoned, and allowed, in accordance with religious or superstitious usage, to roam at large free from all control, and that of such an animal so abandoned and at large after dedication to a temple, but because the accused have undergone three months' rigorous imprisonment for the offences of which they were convicted. We consider there is a material distinction between the two cases " " "

\* \* If on the evidence it appeared that the animal was turned loose after dedication to the temple, and that it was actually or inferentially accepted as so dedicated on behalf of the temple, then though the animal were allowed to be at large free from all control, it would primâ facie be the property of the temple."

The concluding remarks of the same learned Judges indicate "the principles to which regard should be had in such cases." Their Lordships observe:—

"If such animals, in their wanderings at time, trespass on, and do damage to, private property with impunity, it is because superstition induces villagers to regard them with veneration, and to endure the mischief which they commit without seeking redress as of right. If the Sessions Judge's view of the law were correct, it would seem to follow that the trustee of a temple, who accepted the dedication to the temple of such an animal, would not be responsible for injuries caused, for example, to a child playing in the street by a bull, to his knowledge dangerous or

<sup>&</sup>lt;sup>1</sup> Muttuswami Ayyar and Brandt, JJ.

habitually mischievous: a proposition on the face of it untenable. Even in the case of a person wholly abandoning an animal, such as a bull, without any precaution taken for its future control, it is not to be assumed that he would be free from liability, civil or criminal, in respect of damage done by such animal."

Queen-Empress
v. Imam Ali.

(5) In Queen-Empress v. Imam Ali and another, the question was raised whether the word "object" in sec. 295 of the Indian Penal Code included animate objects as The accused, two Muhammadans, were convicted by the Magistrate of Shahjehanpore for killing cows in a public place frequented by Hindus, as the cow, according to the Magistrate's view, was an 'object held sacred by ' the The case came up in revision before the Full Bench who held that the word 'object' in sec. 295 applied to inanimate objects only. Sir John Edge, C. J., came to the conclusion that it was intended that the "object" should be one ejusdem generis with a place of worship, that is, some inanimate object as an idol, &c. Had a wider meaning been intended, he said he should have expected to find in the definition clause the word "object" defined. But there was no such definition, while the words 'animal,' 'man,' 'woman,' and 'person' were there defined. Justice Straight thought that the words 'destroys,' 'damages or defiles,' having been used in connection with the word 'object,' the former precluded the notion that a cow could come within the definition. Justice Brodhurst thought, if the Legislature intended such to be the case, they would have used a more appropriate language, and such word as "kills, maims or otherwise injures any animal" would have been inserted between the word "any object" and the word "held sacred by any

<sup>1</sup> I. L. R., X All., F. B., p. 150.

class of persons." Justice Tyrell concurred with the Chief Justice, and Justice Mahmood observed that the language of statutes should be construed strictly and in favour of the subject, and the words importing a popular meaning ought to be construed in such a sense. But there was another aspect of the case. The bovine species is not the only class of animal held sacred by the Hindu population of India, and indeed even trees, such as the pipal, are included among the objects of worship or veneration by that section of the community; a state of things which made the task of Judges very serious indeed.

He thought it was not beyond his province as a Judge of the High Court to take judicial notice of the religious history of the Hindus, as also of the Muhammadan ecclesiastical law, in so far, as they bear upon the facts of this He then pointed out that sacrifice of a horse or of a cow was allowed in ancient times of the Hindu history. "No doubt with the progress of time the advance of civilization and the development of utilitarian ideas among the people, both these sacrifices fell into disuse, and the cow as the furnisher of milk and the mother of the bovine species (so universally employed in this country for purposes of agriculture) rose from being an object of utility to the footing of sanctity." But this circumstance could not affect the interpretation of the word "object" as it occurs in sec. 295 of the Indian Penal Code. According to Justice Mahmood's opinion, the fact was that Her Majesty's subjects in India having long been accustomed to oppressive methods had not yet advanced to that state of civilization which can appreciate the high ideals of religious toleration and individual liberty which were introduced by the British Government. The learned Judge also thought that difficulties sometimes arose in connection with such matters, which were not due to any defect of the law

but to the inconsiderate and reckless behaviour of the various sections of a public which had not yet learnt to appreciate the blessings of the reforms introduced by He could not help feeling that the accused British rule. had been guilty of imprudent and inconsiderate conduct on their part, and could not conceive that the gentlemanly feelings of any -Muhammadan of the better classes would permit, even on the festival of Id-ul-zoha, the sacrifice of a cow, in a manner which would offend the religious feelings of their Hindu fellow-subjects and neighbours. But with all that, he was bound to hold that sec. 295 of the Indian Penal Code did not cover this case, and that the convictions were therefore wrong in law, and added that the circumstances of the case require that such matters should be dealt with by municipal regulations for which ample provision is made in our law. He said the facts proved in this case did not constitute a criminal offence within the meaning of the Penal Code, but he did not wish to be understood to lay down any general rule as to whether acts done by Hindus or Muhammadans offensive to each other's religious feelings would not in certain circumstances constitute an offence under the Code.

Hakim v. Empress. (6) Another case in which it became necessary to consider the effect of sec. 295 of the Penal Code is Hakim v. Empress.¹ The material facts of the case will appear from the following extract from the judgments of the Chief Court delivered by Plowden, J.: "We consider that there is in the judgment of the Sessions Judge a finding sufficient to render the conviction sustainable. The charge he considers proved under sec. 295, Indian Penal Code, is not identical with that on which the Magistrate convicted, but it is a charge that the accused destroyed

<sup>&</sup>lt;sup>2</sup> Punjab Record, 1884, No. 27. See also note in p. 159 of I. L. R., 10 All.

a cow, an object held sacred by the Hindus, with the knowledge that his Hindu neighbours were likely to consider such destruction an insult to their religion."

It was held, "that the word 'object'" as used in this section is not limited to inanimate objects; it is wide enough to include animate objects which are held sacred, as well as idols, relics, or the like. The narrower construction would leave a very grave species of offences unprovided for, which the language employed, when literally construed, is wide enough to include."

The latest decision on the point is to be found in Romesh Chunthe case of Romesh Chunder Sanyal v. Hiru Mondul. Hiru Mondul. The decision in this case is extremely important as it discusses both classes of cases cited above. The facts of the case were as follows: It appeared that a bull was dedicated and set at large with the usual ceremonies on the occasion of the Adya Sradha of a Hindu. The bull still received some attention from the cowherd of the persons who set it at liberty, and was daily fed by him by direction of his employers, and was not used for breeding purposes without their permission being asked. The accused, two Muhammadans, were charged with having killed the bull. It was shown that they did so secretly at night, no Hindu being present, and for the mere sake of its flesh and skin. The Deputy Magistrate discharged the accused under sec. 293 of the Code of Criminal Procedure, holding that sec. 295 of the Indian Penal Code was not applicable in The Advocate-General obtained a rule on the Advocatetwo accused to show cause why the order of the discharge tained a rule. should not be set aside.

The Deputy Legal Remembrancer, in showing cause, Deputy Legal Remembrancer observed that the essence of the offence provided for in showed cause,

<sup>&</sup>lt;sup>1</sup> I. L. R., 17 Cal., 852.

sec. 295 is the intention of insulting the religious feelings of any class of persons. In this case no such intention was made out. The High Court had often held that the sections on theft, criminal misappropriation or mischief did not apply in the case of a Brahmini bull which was nullius proprietus. He relied upon the unreported case of Dwarka Moochi v. Queen-Empress, and on the two Allahabad decisions in Queen-Empress v. Bandhu<sup>2</sup> and Queen-Empress v. Nihal.3 He urged that the dedication of and letting loose the bull, as shown by the Allahabad cases, necessarily involve the surrender and abandonment of all proprietary rights in it. He also relied upon Queen-Empress v. Imam Ali by which it had been held a bull was not an object within the meaning of sec. 295 of the Indian Penal Code.4

Advocate-General in reply. The Advocate-General, on the other hand, relied upon the Punjab case of Hakim v. Empress,<sup>5</sup> and the Madras case of Queen-Empress v. Nulla.<sup>6</sup> He observed that Chapter XV of the Penal Code deals with offences relating to religion, and sec. 295 is of a most comprehensive character. There would seem to be no real reason why the destruction of a picture of a monkey which is worshipped should be held to be within the section, while the destruction of a monkey itself, which is equally worshipped should be excluded. The Learned Counsel also contended that the interpretation put on the section by Sir John Edge in the case of Queen-Empress v. Imam Ali,<sup>7</sup> is erroneous, and he has misapplied the doctrine of ejusdum generis (see Maxwell on Statutes, 2nd Ed., p. 540). He maintained that the word "destroy" in sec. 295

<sup>&</sup>lt;sup>1</sup> Criminal motion No. 86 of 1884 decided by McDonell and Field, JJ.

<sup>&</sup>lt;sup>2</sup> I. L. R., 8 All., 51.

<sup>\*</sup> I. L. R., 9 All. 348.

<sup>4</sup> I. L. R., 10 All., 150.

<sup>&</sup>lt;sup>6</sup> Punjab Record, 1884, No. 27.

I. L. R., 11 Mad., 145.

<sup>&</sup>lt;sup>1</sup> I. L. R., X All., 150.

undoubtedly includes "to kill." The Advocate-General also observed that, "if we look to see what mischief this chapter of the code was intended to provide against, we find that it was certainly not intended to restrict sec. 295 to inanimate objects." He referred to the notes to the Penal Code prepared by the Indian Law Commissioners, published in 1837, in which "Lord Macaulay expressly refers to the slaughter of a cow in a sacred place at Benares as being a very serious matter and likely to lead to tumult, outrage, and even insurrection, and treats that as one of the offences for which the Commissioners had provided in this chapter." 1 As to the sacred character of the bull he quoted Menu, Chapter VIII, sl. 242 (Colebrooke's Digest, Vol. II, p. 370). And the Learned Counsel further contended that the evidence showed that those who had dedicated the bull and set it at large, still retained such a "property" in the animal as to make it capable of being the subject of theft, criminal misappropriation, or mischief.8

The judgment of the Court was delivered by Norris, J. Judgment of the High Court The learned Judge followed the decision in Queen-Empress delivered by v. Imam Ali, and held that the bull is not an "object" within

<sup>&</sup>lt;sup>1</sup> In Note J. the Commissioners say:--"We have prescribed a punishment of great severity (the proposed punishment was rigorous imprisonment for a term which might extend to seven years) for the intentional destroying or defiling places of worship, or of objects held sacred by any class of persons. No offence in the whole Code is so likely to lead to tumult, to sanguinary outrage, and even to armed insurrection. The slaughter of a cow in a sacred place at Benares in 1809 caused violent tumult, attended with consider-

able loss of life. The pollution of a mosque at Bangalore was attended with consequences estill more lamentable and alarming. We have, therefore, empowered the courts in cases of this description to pass a very severe sentence on the offender." See I. L. R., 17 Cal., p. 859.

Compare Mitra Misra's remarks as to the customary right of guardianship of a dedication over things the ownership of which he has renounced by dedication. Para. 40, Chap. VIII (sec. 10).

the meaning of sec. 295, and consequently, the killing of the bull was not a "destroying" within the meaning of the same section. The learned Judge could not agree with the Advocate-General that Edge, C. J., had either misapprehended or misapplied the rule of ejusdem generis in constructing this section, and he did not think that the passages cited from Maxwell on Statutes supported the contention. The learned Judge thought "that by the word 'object' the Legislature meant something 'ejusdem generis' with a place of worship, such as an idol, or a picture which was the subject of litigation in Gossamee Sree Greedharjee v. Rumunlolljee Gossamee; 1 something that is capable of 'destruction' in the sense in which that word is ordinarily used, or of 'damage' or of 'defilement.' Had the Legislature intended to make the killing of a dedicated bull an offence under sec. 295, I think that they would have used language clearly expressing that intention." Then referring to Lord Macaulay's note referred to above, the learned Judge pointed out "'what caused the violent tumult at Benares in 1809' was not the slaughter of the cow, but its slaughter in a sacred place. The naming of two instances, one the defilement or pollution of a sacred place, the other the pollution of a place of worship, and then the use of the words 'cases of this description,' so far from helping the learned Advocate-General's contention seems to me (Norris, J.) to militate against it."

Norris, J., also held that the bull was not "moveable property" within the meaning of secs. 378 and 403, Indian Penal Code, and could not therefore be the subject of theft, or of criminal misappropriation. In his opinion it was also "property" within the meaning of sec. 425, Indian Penal Code, and could not therefore be the

<sup>&</sup>lt;sup>1</sup> L. R., 16 I. A., 137; I. L. R., 17 Cal., 3.

subject of mischief. For these conclusions the learned Judge relied upon the Allahabad decisions (Queen-Empress v. Bandhu<sup>1</sup> and Queen-Empress v. Nihal), and failed to see anything in the judgment in the Madras case (Queen-Empress v. Nulla8 cited by the Advocate-General) "in the least degree impeaching or questioning the correctness of the law laid down by Straight, J.," in the above Allahabad decisions. Norris, J., did not think that "the fact that the bull in this case still receives some attention from the Rajbari cowherd, and is daily fed by him by the direction of his employers, is at all inconsistent with a total surrender by those who set him at liberty of all their rights as proprietors." The person who performed the sraddha might regard it as a moral duty to feed a bull after it has been set at liberty, and if the villagers did not use it for breeding purposes without asking his permission, Norris, J., thought that it was only a matter of courtesy on their part, and ought not to be construed as evidence of any property in the animal remaining in those who set him at large.

Lastly, having regard to the evidence in the case, the learned Judge relying upon Mr. Kilby's argument, held that "if the killing of the bull was a 'destroying,' and if the bull was an 'object' within the meaning of sec. 295, Indian Penal Code, it was not proved that the accused persons destroyed that object with the intention of thereby insulting the religion of any class of persons."

<sup>&</sup>lt;sup>3</sup> I. L. R., 8 All., 51.

<sup>8</sup> I. L. R., 9 All., 348.

<sup>8</sup> I. L. R., 11 Mad., 145.

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